

No. 15-72440

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**In re JOSEPH M. ARPAIO, in his official capacity as Sheriff
of Maricopa County, Arizona**
Defendant/Petitioner

and **GERARD A. SHERIDAN**
Specially appearing non-party/Petitioner

v.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**
Respondent Court

and **MANUEL DE JESUS ORTEGA MELENDRES, et al.**
Plaintiffs/Real Parties in Interest.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
2:07-CV-02513-GMS
The Honorable G. Murray Snow, United States District Judge**

**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3
PETITIONERS' REPLY IN SUPPORT OF MOTION TO STAY DISTRICT
COURT PROCEEDINGS**

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CIRCUIT RULE 27-3 CERTIFICATE

In order to avoid irreparable harm, Petitioners request this Court rule on their Motion to Stay prior to the resumption of contempt proceedings before Arizona District Court Judge G. Murray Snow on September 22, 2015. In the alternative, Petitioners request that this Court grant a temporary stay of the September 22, 2015 contempt proceedings until it can rule on Petitioners' Motion to Stay.

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(ii) Facts showing the existence and nature of the claimed emergency.

Petitioners filed a Motion to Stay with the district court, asking that court to stay further contempt proceedings until this Court could decide whether Judge Snow should have recused himself from the proceedings. This motion was denied.

The same six discrete arguments made in that Motion and in Petitioners' currently pending Motion to Stay in this Court demonstrate that Judge Snow's continued participation in these proceedings violates [28 U.S.C. § 455](#) and requires his recusal.¹ Thus, Judge Snow's continued presence over these proceedings presents both a substantial risk to the Petitioners' constitutional rights and endangers the public's perception of an impartial judiciary.

Petitioners request emergency relief now because the district court's contempt proceedings will resume on September 22, 2015, thus increasing the exigency of this matter. Judge Snow is set to make evidentiary rulings, witness credibility determinations, and issue further orders on or before September 22, 2015, which will cause Petitioners irreparable harm. When Petitioners first filed their Motion to Stay on August 20, 2015, Petitioners hoped this Court would have accepted mandamus review and granted relief before resumption of the September 22 contempt proceedings, given the expedited nature of writs of mandamus. Because, this has not occurred, Petitioners now request this Court to, at the very

¹ These grounds are: (1) the Motion for Recusal was timely, (2) Judge Snow and his spouse are material witnesses in this action, (3) The injection of MCSO's internal investigations and expansion of the Monitor's powers was a violation of petitioners' due process rights and demonstrates bias by the court, (4) Judge Snow improperly engaged (and continues to engage) in an extrajudicial investigation of disputed facts, (5) Recusal was mandatory because Judge Snow's brother-in-law is a partner at Covington and Burling, and (6) An objective, independent observer would have found recusal necessary under [§ 455\(a\)](#). As noted, below, these six reasons relate only to the ongoing contempt proceedings. *See infra* § II(C) at p. 12.

least, grant a temporary stay of the district court proceedings, set to resume on September 22, while the Court considers Petitioners' Motion to Stay and Petition for Writ of Mandamus.

(iii) When and how counsel for the other parties were notified and whether they have been served with the Motion.

Petitioners contacted opposing counsel on September 14, 2015, notifying them that they have requested emergency review. Petitioners also provided all parties an electronic PDF copy of this Motion contemporaneously with their filing of this Motion with this Court. In addition, prior to filing this Motion, Petitioners notified the Clerk of Court that they will be requesting emergency relief pursuant to Circuit Rule 27-3(a).

REPLY IN SUPPORT OF MOTION TO STAY

I. INTRODUCTION

The ACLU's² Response to Petitioners' Motion for Stay reads like an improperly authorized Answering Brief, attempting to inject entirely irrelevant facts and issues that have absolutely no bearing on whether this Court should grant a temporary stay of the district court's contempt proceedings to decide Petitioners' Writ of Mandamus. For the foregoing reasons, a stay is warranted.

II. A STAY IS WARRANTED UNDER THE FOUR *NKEN* FACTORS

The ACLU's Response fails to acknowledge the proper standard for a stay on appeal. In order to justify a stay "petitioners need not demonstrate that it is more likely than not that they will win on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). The court in *Leiva-Perez*, while addressing the *Nken* factors, recognized that "[t]here are many ways to articulate the minimum quantum of likely success necessary to justify a stay—be it a reasonable probability or fair prospect, . . . a substantial case on the merits, . . . or, . . . that serious legal questions are raised." (quotations omitted). *Leiva-Perez*, 640 F.3d at 967-68. "Regardless of how one expresses the requirement, the idea is that in order to justify a stay, a petitioner must show, at a minimum, that she has a substantial case for relief on the merits." *Id.* at 968. Thus, Petitioners need only

² Petitioners refer to Plaintiffs-Appellees collectively as the "ACLU."

demonstrate that they have a “substantial case for relief on the merits” in order to be entitled to a stay.

A. Petitioners have a substantial case for relief on the merits.

For the foregoing reasons, *none* of the arguments in the ACLU’s Response has diminished the fact that Petitioners have a “substantial case for relief on the merits” demonstrating that Judge Snow’s failure to recuse himself was clearly erroneous for six discrete reasons. *Id.*

1. Petitioners’ Motion for Recusal was Timely.

The ACLU’s Response commits the same error that the Court did when it ruled that Petitioners’ Motion for Recusal was untimely – the basis for recusal did not arise in 2012, 2013, or even 2014 – it arose on April 23, 2015 when Judge Snow injected irrelevant and unrelated issues into the contempt proceedings. First, Petitioners never argued that the grounds for recusal arose out of the Grissom/Montgomery investigations themselves. It was the Court’s improper inquiry into these matters during the April 2015 contempt hearings that injected these irrelevant investigations into the proceedings and ripened their grounds for recusal. *See, Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991) (Recusal motions are timely, even if filed a year or more later, where the grounds for recusal do not arise until later); *Edgar v. K.L.*, 93 F.3d 256, 257-58 (7th Cir. 1996) (same). Second, the Court’s subsequent order directing that the Monitor be given

unfettered access to investigate these and other irrelevant matters did not occur until May 14, 2015. The recusal motion was filed within a week of that, on May 22, 2015. Therefore, the recusal motion was timely.

2. Judge Snow and his spouse are material witnesses in this action.

The ACLU incorrectly claims that Judge Snow and his spouse are not material witnesses because Petitioners: (1) failed to explain how the Grissom statements would make either the Court or his spouse a “material witness” in the contempt proceedings, (2) chose to disregard the Grissom statements, and (3) allegedly argued that the facts underlying the Grissom investigation did not relate to the contempt proceedings. [ACLU Response at 12]. First, Petitioners clearly asserted that under [28 U.S.C. § 455\(b\)\(5\)\(iv\)](#), *uncontradicted* evidence existed that Judge Snow’s spouse told the Grissom family that he was biased against Sheriff Arpaio and that he would do everything in his power to ensure he was not re-elected. [See Doc. 1117 (Exs. 5-8), Ex. 8]. Furthermore, the Court’s subsequent orders directing the Monitor to investigate into these matters only further cements the Court’s material witness status. Second, Petitioners did not “disregard” the comments made by the Grissoms, rather, out of respect for the Court, Petitioners declined to further investigate into these matters (despite confirming they were in fact substantiated) and would never had raised them if the Court did not inquire into them. Finally, the ACLU ignores, because they must, that once the Court

injected the Grissom investigation into the April 2015 contempt proceedings, this not only violated Petitioners due process rights, *see infra* § 3, but also made these issues relevant and ripened Judge Snow and his wife as material witnesses to the proceeding.³

Accordingly, through no fault other than his own, Judge Snow made himself and his spouse material witnesses in this action. *See United States v. Alabama*, 828 F.2d 1532, 1545 (11th Cir. 1987) (disqualification required when judge “forced to make factual findings about events in which he was an active participant.”).

3. The expansion of the Monitor’s powers was improper and violated Petitioners’ Due Process Rights.

The ACLU claims that the Court “also possesses broad equitable authority to modify the monitoring and compliance tasks it delegates to the Monitor” but cites absolutely no authority to support that proposition.⁴ [ACLU Response at 16-18].

³ Moreover, when *directly questioned* whether the Court felt the Grissom investigation was relevant to the contempt proceedings, the Court failed to state that the Grissom investigation was not relevant to the contempt proceedings. [See 8/21/15 RT at 59:8-60:14]. Even if it did, however, it cannot now un-ring the bell.

⁴ The ACLU’s citation to *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 380-81 (1992) and *Hutto v. Finney*, 437 U.S. 678, 687 (1978) do not support this proposition either because neither of these cases involved the expansion of a Court appointed monitor’s duties. Moreover, these cases discuss the Court’s authority to issue a *new* order or *modifying* an existing order in light of compliance issues, which was never done in this case, further demonstrating the Court’s bias and its abuse of Petitioners’ due process rights.

Regardless, the ACLU conflates Petitioners' violations of prior Court orders (the topics of the contempt proceedings) with the sufficiency of its internal investigations, neither of which are interrelated. Again, the Order to Show Cause only states *three distinct* areas of inquiry for the contempt proceedings, none of which involve inquiry into MCSO internal investigations. To date, the Court has never modified or issued a new order to show cause identifying that MCSO's internal investigations are one of the grounds for the contempt proceedings. Moreover, Petitioners' opportunity to be heard during future contempt proceedings is not a sufficient corrective measure to the Court's surprise, improper inquiry into these matters because it does not permit defense counsel adequate time to prepare a defense to the Court's ever expanding scope of ad hoc issues it deems related to the contempt proceedings.⁵ Finally, even the Court has retreated from finding these matters relevant to the contempt proceedings (despite continuing to investigate them as part of the contempt proceedings). [See 7/24/15 Tr. at 21:6-10, Ex. 16; 7/31/15 RT at 44:16-21, Ex. 13]. Thus, the Court was not "well within its power" to inquire into these areas via its Monitor. See *Little v. Kern Cnty. Superior Court*,

⁵ Indeed, this Court set contempt hearings to resume on September 22, 2015. The Court permitted the ACLU to request 26 depositions from September 3rd to the 21st, giving Petitioners' counsel less than *one day* to prepare for the continued contempt proceedings – the topics of which are still unclear to Petitioners. These stringent deadlines are only demonstrative of the continued bias Petitioners face from this Court, are not conducive to the preservation of Petitioners' due process rights, and would not be tolerated in any other circumstance.

294 F.3d 1075, 1081 (9th Cir. 2002) (“notice of the contempt charges and of the contempt hearing must be explicit in order to conform to the requirements of due process.”).⁶ Accordingly, the Court’s continued insistence to investigate into MCSO’s internal investigations (with the assistance of its Monitor) as a basis for finding Petitioners in contempt is a violation of Petitioners’ due process rights and patently demonstrates the Court’s bias, requiring its recusal under §455(b)(1).⁷

4. Judge Snow improperly engaged (and continues to engage) in an extrajudicial investigation of disputed facts.

No argument contained in Petitioners’ Motion to Stay (or its Writ of Mandamus for that matter) asserts that the Court could not speak with its Monitor. Rather, Petitioners argued that certain *ex parte* communications between the Court

⁶ While the ACLU is correct that a judge may question a witness, and a witness does not have a right to advance notice of every question, the Court cannot inquire into matters entirely *unrelated* to the current proceeding, and which *directly* implicates the Court’s impartiality. See *United States v. Wilson*, 16 F.3d 1027, 1031 (9th Cir. 1994).

⁷ The ACLU’s reference to Petitioners’ failure to produce emails and the existence of additional identification documents recently discovered does not demonstrate the Court has authority to expand the Monitor’s authority into MCSO’s internal investigations because this information has come out long *after* the Court began improperly probing into MCSO’s internal investigations. Moreover, Petitioners have complied with the Court’s request to produce these emails on a rolling basis to the ACLU and have made additional identification documents available as soon as they became aware of them. [See 8/28/15 RT at 31:19-32:21, attached as Ex. A]. Finally, Petitioners’ failure to object to the Court’s line of questioning does not waive their arguments now. The ACLU cites no authority for this proposition and nothing under 28 U.S.C. § 455 requires an objection to be raised the moment it occurs during the proceedings.

and its Monitor are impermissible.⁸ These include those communications which give the Court *personal knowledge* of disputed evidentiary facts concerning the

⁸ Contrary to the ACLU's arguments, there are limitations on ex-parte communications between the Court and its Monitor. In the Court's appointing order setting forth the Monitor's powers and duties, pursuant to F.R.C.P. 53(b)(2)(B), it was required to state "the circumstances, if any, in which the [Monitor] may communicate ex parte with the court or a party." Courts have clearly applied Rule 53 to a Court appointed Monitor. *See e.g., United States v. Apple Inc.*, 787 F.3d 131, 139 (2d Cir. 2015); *Howe v. City of Akron*, 17 F. Supp. 3d 690, 692 (N.D. Ohio 2014). Moreover, Courts have traditionally limited ex parte communications between a Court and its monitor to regard logistics, the nature of his activities, and other appropriate procedural matters. *See e.g., Satyam Computer Servs., Ltd. v. Venture Global Eng'g, LLC*, No. 06-CV-50351-DT, 2007 WL 1806198, at *6 (E.D. Mich. June 21, 2007); *In re Oral Sodium Phosphate Solution-Based Products Liab. Action*, No. 1:09-SP-80000, 2009 WL 2601395, at *2 (N.D. Ohio Aug. 24, 2009). This limitation complies with the commentary to Rule 53. *See* Rule 53, 2003 amendment, cmt. b. ("Ex parte communications between a master and the court **present troubling questions**. Ordinarily the order should prohibit such communications, assuring that the parties know where authority is lodged at each step of the proceedings.") (Emphasis added).

As such, most Courts have strictly instructed their Monitor to not communicate with the Court on any substantive matter the Monitor learned during an ex parte communication between the Monitor and any party. *See Howe v. City of Akron*, 17 F. Supp. 3d 690, 692 (N.D. Ohio 2014) ("The Monitor shall not communicate to the Court any substantive matter the Monitor learned during an ex parte communication between the Monitor and any party."); *see also Case v. French Quarter III LLC*, No. 9:12-CV-02518-DCN, 2014 WL 6971019, at *2 (D.S.C. Dec. 9, 2014) (same); *Sibley v. Sprint Nextel Corp.*, 298 F.R.D. 683, 686-87 (D. Kan. 2014) (same).

While the Court's appointing order in this case clearly permits ex parte communications with "the Parties" and its Monitor, it is entirely silent regarding ex parte communications between the Court and the Monitor. [See Doc. 606 at ¶¶ 129, 119-159]. Therefore, because the appointing order is silent regarding ex parte communications between the Court and the Monitor, their ex parte communications should be limited, at best, to logistical and procedural matters.

contempt proceedings. 28 U.S.C. § 455(b)(1). Accordingly, the Court’s *ex parte* communications with its Monitor *are limited* under Rule 53 and § 455(b)(1). Therefore, when Judge Snow proceeded to conduct an *ex parte* discussion with the Monitor, outside of the contempt proceedings, that regarded the very issues at the heart of the contempt proceedings, the communication was not authorized under Rule 53 and violated § 455(b)(1). *See Price Bros. Co. v. Philadelphia Gear Corp.*, 629 F.2d 444, 446-47 (6th Cir. 1980) (noting that gaining information from a law clerk’s independent investigation of disputed facts would be a violation of Canon 3(c)(1)(a) and § 455).⁹ Given this communication, and that the Court continues to communicate *ex parte* regarding the Monitor’s investigation into other contested factual issues,¹⁰ Judge Snow’s failure to recuse himself was clearly erroneous as a matter of law.

5. Recusal was mandatory because Judge Snow’s brother-in-law is a partner in Covington & Burling.

The ACLU argues that “[t]he district court correctly concluded that the authorities did not create a *per se* rule of recusal, but only recognized that circumstances may require recusal when the partner’s interest in the proceedings is

⁹ Again, nothing in the Court’s existing judicial orders gives the Monitor a duty to advise the Court regarding the accuracy of testimony given during the contempt proceeding. [See Doc. 606 at ¶ 126 (Setting forth the Monitor’s duties)].

¹⁰ *See e.g.*, 7/31/15 RT at 10:17-18, 18:22-19:4, attached as Ex. B; 8/7/15 RT at 16:15-18:15, 30:12-17, Ex. 14; 8/11/15 RT at 24:17-22, 51:22-52:3, 52:14-16, 53:5-10, Ex. 15.

‘substantial,’ which is a ‘fact sensitive inquiry.’” [ACLU Response at 9]. However, the ACLU ignores that after Judge Snow’s ruling, many of the grounds for his “fact sensitive inquiry” in 2012 have changed. In Judge Snow’s June 2012 order, he noted that recusal was not required at the time because there was only a “remote possibility” that Plaintiffs would be awarded attorney’s fees (and if they did it would “be very small”); thus it “was speculative” whether the Court’s brother-in-law had a financial interest in the outcome of the case. [Doc. 542, Ex. 23]. As of 2015, however, Covington & Burling has been awarded nearly \$3.5 million in fees and costs [Doc. 742, Ex. 20], and have requested nearly half a million dollars more in fees and costs for the appeal of the bench trial.¹¹ This is hardly a “very small” amount, making it no longer “speculative” that Covington & Burling has a financial interest in this litigation. *See* Canon 3(C)(3)(c) (holding that “‘financial interest’ means ownership of a legal or equitable interest, *however small ...*”) (emphasis added).¹² Finally, Judge Snow never indicated he wrote to

¹¹ *See* Ninth Circuit Case No. 13-16285, 13-17238, Dkt. 89, Ex. E.

¹² In addition, the June 2012 Letter sent by Covington & Burling to the Court and counsel states that Judge Snow’s brother-in-law retired from Covington & Burling. However, as of September 7, 2015, he is still displayed as an active member of the firm. [See attached Ex. C, Bio of Keith A. Teel]. Moreover, decisions published as recently as June 8, 2015 note that he is still practicing on behalf of Covington & Burling. *See AstraZeneca LP v. Breath Ltd.*, 603 F. App’x 999, 1000 (Fed. Cir. 2015) (Keith A. Teel representing plaintiff on behalf of Covington & Burling); *United States v. Philip Morris USA Inc.*, No. CV 99-2496(GK), 2015 WL 3549622 (D.D.C. June 8, 2015) (representing defendants).

the Judicial Ethics Advisory Committee, as Judge Wake did in *Fiore v. Apollo*, 2015 WL 1883980 (D. Ariz. Apr. 24, 2014). Importantly, in response to Judge Wake's inquiry regarding Judicial Advisory Opinion No. 58, the Committee reiterated that a categorical rule of recusal exists when a relative within the third degree of relationship is an equity partner in a law firm in the case, notwithstanding his residence in a different office and the lack of any involvement or effect on his income.

Both of these developments constitute significant changed factual circumstances that have occurred since the issuance of Judge Snow's June 2012 Order on this issue, and should have been raised by the Court, at the very least, before instituting the contempt proceedings against new parties. However, the Court failed to do so, despite previously recognizing that, as the ACLU states, "any party" could have requested the Court to recuse himself. [ACLU Response at 10].

6. An objective independent observer would have found recusal necessary under 28 U.S.C. § 455(a).

In light of all of the foregoing arguments, an objective independent observer would have found recusal necessary under 28 U.S.C. § 455(a). The ACLU's arguments to the contrary, which are largely based on assertions that Petitioners

The record is therefore devoid of evidence that the court's brother-in-law did not receive some financial benefit (either directly or indirectly) from this substantial award, regardless of the June 2012 letter sent to the Court from Covington & Burling.

manufactured their basis for judicial disqualification, are not grounded in any facts and are rank speculation. It is a disguised attempt to distract this Court from a simple and undeniable truth – Judge Snow injected each and every one of the aforementioned issues into these proceedings. Defendants did not once raise any of these issues as an affirmative defense (or at all) during the contempt proceedings – in fact, they *admitted* contempt. As such, an objective independent observer, in light of all the issues raised above, would find that recusal was necessary under § 455(a). See *Fairley v. Andrews*, 423 F. Supp. 2d 800, 821 (N.D. Ill. 2006) (“all of this Court's statements and interactions with Defendants in this case, taken together, may give pause to a non-legal observer, not versed in the ways of the courtroom and the risks of litigation.”).

B. Petitioners will be irreparably injured absent a stay.

It is curious that the ACLU argues that the injured class’ right to monetary compensation outweighs Petitioners’ due process rights. It is axiomatic if Judge Snow is precluded from sitting on this case pursuant to 28 U.S.C. § 455, his continued participation in the contempt proceedings and compliance phase of this action endangers not only the Petitioners’ rights, but also the appearance of the Court’s fairness and impartiality to the public. As such, it is understandable that this Court has recognized that a denial of a Motion for Recusal is exactly the kind of “exceptional circumstance that [a writ of mandamus] was designed [for].”

Cement Antitrust Litig., (MDL No. 296), 673 F.2d 1020, 1025 (9th Cir. 1982).

Moreover, given that this case is in the remedial stage of litigation, the district court will not be issuing a “final order” that can be appealed. Thus, absent mandamus relief, Petitioners will be prejudiced in a way not correctable on later appeal.

C. Issuance of the stay will not substantially injure the other parties interested in the proceeding and will favor the public interest.

The ACLU argues that a “stay would substantially injury Plaintiffs by further delaying compensation to those who were detained in violation of the December 23, 2011 preliminary injunction” because it will be unable to locate those victims. However, there is absolutely nothing stopping the ACLU from locating the alleged victims of Petitioners’ violation of the December 23, 2011 preliminary injunction. In fact, a stay will give the ACLU additional time to do so. As such, a stay will actually *favor* the ACLU.

The ACLU also presumes that Petitioners’ compliance efforts would not continue with the existing permanent and supplemental injunctive orders if a stay were granted. This is an incorrect assumption. *Petitioners unequivocally assert that if this Court granted a stay, MCSO will continue to implement corrective action pursuant to the Court’s permanent and supplemental injunctive orders. Petitioners only seek to stay all matters associated with the ongoing contempt proceedings.* Petitioners also reiterate that the right to a neutral and detached

judge in any proceeding is an integral part of maintaining the public's confidence in the judicial system. See *Ward v. City of Monroeville*, 409 U.S. 57, 61-62 (1972). Accordingly, the public interest greatly favors a stay.

III. CONCLUSION

For the reasons stated above, Petitioners request this Court stay the district court's contempt proceedings pending resolution of their writ of mandamus.

RESPECTFULLY SUBMITTED this 14th day of September, 2015.

JONES, SKELTON & HOCHULI, P.L.C.

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CERTIFICATE OF COMPLIANCE

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Signature	/s/ John T. Masterson
Attorney for	Defendants/Petitioners Joseph M. Arpaio and Gerard A. Sheridan
Date	September 14, 2015

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Petitioners' Reply in Support of Motion to Stay District Court Proceedings** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on the 14th day of September, 2015.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system:

/s/Karen Gawel

EXHIBIT A

Status Conference 8-28-15.txt

1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA
3
4 Manuel de Jesus Ortega Melendres,)
5 et al.,)
6 Plaintiffs,) No. CV 07-2513-PHX-GMS
7 vs.) Phoenix, Arizona
8 Joseph M. Arpaio, et al.,) August 28, 2015
9 Defendants.) 9:38 a.m.
10)
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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE G. MURRAY SNOW
16 (Status Conference)
17
18
19
20
21

22 Court Reporter: Gary Moll
23 401 W. Washington Street, SPC #38
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25 Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

CV07-2513, Melendres v. Arpaio, 8/28/15 Status Conference 2

1 A P P E A R A N C E S
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16 Sheriff's Office:

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1 A P P E A R A N C E S

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17 For Deputy Chief Jack MacIntyre:
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20 For Chief Deputy Gerard Sheridan:
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1 A P P E A R A N C E S

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3 For Executive Chief Brian Sands:
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9 Also present:
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10 Commander John Girvin, Deputy Monitor- Telephonically
Chief Raul Martinez, Deputy Monitor - Telephonically
11 Chief Deputy Gerard Sheridan
Michelle Morin, Esq. - Telephonically

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Raphael O. Gomez, Esq. - Telephonically

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1 P R O C E E D I N G S

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3 THE COURT: Please be seated.

4 THE CLERK: This is CV 07-2513, Melendres v. Arpaio,
5 on for status conference.

6 Counsel, please announce your appearances.

7 MS. WANG: Good morning, Your Honor. Cecillia Wang of
8 the ACLU for the plaintiffs.

9 THE COURT: Good morning.

10 MR. YOUNG: Good morning, Your Honor. Stanley Young,
11 Covington & Burling, for plaintiffs.

12 THE COURT: Good morning.

13 MS. IAFRATE: Good morning, Your Honor. Michele
14 Iafrate on behalf of Sheriff Arpaio and the unnamed alleged
15 contemnors.

16 MR. MASTERSON: Good morning, Judge. John Masterson
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17 and Joe Popolizio for Sheriff Arpaio.

18 THE COURT: You know, Mr. Masterson, I just have a
19 question: Are you just appearing for Sheriff Arpaio?

20 MR. MASTERSON: No, Judge. We're the same as
21 Ms. Iafrate. I just shortened it because --

22 THE COURT: I know, I appreciate that. I just wanted
23 to make clear.

24 MR. WALKER: Good morning, Your Honor. Richard walker
25 and Charles Jirauch on behalf of Maricopa County as defined in
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1 previous appearances and filings with the Court.

2 THE COURT: You know, Mr. walker, I saw that you filed
3 something early this morning; I haven't read it yet.

4 Just for clarity's sake, it does seem to me -- I read
5 maybe, like, the first paragraph -- just for clarity's sake for
6 any party that may wish to respond, it does seem to me that
7 Maricopa County is a party and has a right to separate
8 representation. But you are a party to the extent that you are
9 the jural entity that needs to be sued when the Sheriff's
10 Office is sued.

11 So I'm not sure that you have a status here as
12 Maricopa County only representing certain aspects of its
13 organization, for what that's worth. That's why it troubles me
14 when you take a position that is substantively different than
15 the sheriff, sheriff's position.

16 And I don't know, because I haven't read your motion.
17 I just barely got it. I, like, glanced at the first page. I
18 don't know if you address that or not, but that's really what
19 concerns me. I'll just tell you that and then we'll move on.

20 MR. WALKER: Okay. Thank you, Your Honor.

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22 THE COURT: All right. Thanks.

23 MR. COMO: Good morning, Your Honor. Greg Como
24 representing Brian Sands, who has waived his appearance today.

25 MR. WOODS: Terry Woods for Lutz and -- for Stutz and
Liddy.

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1 THE COURT: All right. Thank you.

2 MR. STEIN: Good morning, Your Honor. Lee Stein,
3 specially appearing for Chief Deputy Sheridan, who is present.

4 MR. EISENBERG: Good morning, Your Honor. David
5 Eisenberg, specially appearing on behalf of Lieutenant Sousa.
6 I would excuse his presence for this day only.

7 THE COURT: All right. Thank you.

8 MR. CALDERON: Good morning, Your Honor. Ernest
9 Calderon on behalf of County Attorney William Montgomery and
10 his office.

11 MR. PATEL: Good morning, Your Honor. Mitesh Patel,
12 Dickinson Wright, specially appearing for Deputy Chief
13 MacIntyre.

14 THE COURT: Who do we have on the phone?

15 CHIEF WARSHAW: Yes. Good morning, Your Honor.
16 Chief Warshaw, and with me are two deputy monitors: Chief Raul
17 Martinez and Commander John Girvin.

18 THE COURT: Good morning.

19 MS. ALBARRAN: Good morning, Your Honor. On behalf of
20 plaintiffs, from Covington you have Tammy Albarran, Lauren
21 Pedley, and Michelle Morin; and from the ACLU, Andre Segura.

22 THE COURT: Good morning.

23 MR. McDONALD: Good morning, Your Honor. Mel McDonald
24 making a special appearance on behalf of Sheriff Joe Arpaio.

25 THE COURT: Good morning.

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1 MR. KILLEBREW: Good morning, Your Honor. Paul
2 Killebrew and Ed Caspar for plaintiff-intervenor United States.

3 MR. GOMEZ: Good morning, Your Honor. Raphael Gomez
4 from Civil Division, U.S. Department of Justice.

5 THE COURT: Is that everyone?

6 All right. Good morning to you all.

7 Ms. Wang, I instructed -- or I asked you last week if
8 you would please -- we went through last week the status of
9 production of documents. Ms. Iafrate had produced many things
10 to you. There were a few things that were outstanding. I
11 handled the things that they hadn't timely produced by denying
12 their motion. They indicated they understood, and I entered
13 that in my order.

14 I also asked you, though, to confirm that Ms. Iafrate
15 had given you everything that she had given you. Can you
16 confirm that?

17 MS. WANG: I do have that update, Your Honor.

18 There are a couple of outstanding issues. The first
19 is that -- and I should mention first that we noticed after
20 last week's status conference that there is a discrepancy
21 between documents 1203 and 1208 on the docket. 1208 is Your
22 Honor's order setting forth the dates for document production
23 and there appears to be a typographical error in it. There are
24 two categories that are repeated.

25 The missing category that had been set forth in

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1 Ms. Iafrate's filing, which was document 1203, related to
2 documents having to do with detentions in violation of the

3 Status Conference 8-28-15.txt
preliminary injunction order --

4 THE COURT: Yes.

5 MS. WANG: -- by non-Human Smuggling Unit units of
6 MCSO.

7 We have continued to meet and confer with Ms. Iafrate
8 on this issue. Defendants' position -- and, of course, I'll
9 let Ms. Iafrate speak for herself -- is that they are unable to
10 do that search.

11 Their position is that plaintiffs should look at the
12 CAD database that was produced and identify such detentions in
13 violation of the preliminary injunction order by non-HSU
14 deputies, identify the stops at issue, and then they will
15 search for documents.

16 Plaintiffs' position is that they should undertake a
17 reasonable search for documents. We, for example, suggest that
18 there may be documentation of contacts between non-HSU deputies
19 and federal immigration officials such as Border Patrol or ICE.
20 If such contacts were made, that could indicate that there was
21 such a detention by a non-HSU deputy, but we may be at an
22 impasse on whether that search should be conducted by the
23 defendants.

24 I believe the only other issue that we need to raise
25 with the Court right now is that last week there was a question
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1 about whether there was a complete production of the internal
2 investigation files relating to any potential discrimination
3 against members of the plaintiff class going back to 2008. In
4 fact, Ms. Iafrate, upon meeting and conferring with us after
5 last week's status conference, discovered there were six files
6 that had not been produced.

7 Those were produced to us I believe yesterday?

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8 Yes, yesterday.

9 THE COURT: All right. What about the Mackiewicz
10 hard drive, which Ms. Iafrate was going to do a privilege
11 review and give you a privilege log, has that been provided?

12 MS. WANG: That was the -- do you mean the Chief
13 Knight --

14 THE COURT: Yes.

15 MS. WANG: -- hard drive?

16 THE COURT: Yes. The Chief Knight hard drive that he
17 was holding that was my understanding he got from Detective
18 Mackiewicz.

19 MS. WANG: I don't think we've gotten that privilege
20 log.

21 THE COURT: All right. But as far as you know, that's
22 the status of everything outstanding?

23 MS. WANG: Yes, Your Honor. You're already aware of
24 the issue with the PST files. Those are being produced on an
25 ongoing basis. And we are meeting and conferring with

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1 Mr. Walker and Mr. Masterson about the 50-hard-drive issue.

2 THE COURT: All right. We'll raise that probably
3 later to see where we're at on that.

4 MS. WANG: All right.

5 MR. YOUNG: Your Honor, just to supplement, there is
6 one document production issue which relates to defendants as
7 well as to their former attorneys, Mr. Casey and the attorneys
8 at the MCAO, and it relates to the scope of Your Honor's May
9 14, 2015 order finding a waiver of privilege and work product
10 as to communications relating to the preliminary injunction
11 violation. We are conferring about that now. We've had some

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12 useful discussions this morning.

13 I do want to let Your Honor know that if we can't
14 reach agreement on that, we may be bringing certain privilege
15 logs to you next week to resolve those issues prior to the
16 depositions that we want to take.

17 THE COURT: That makes sense.

18 Ms. Iafrate, did you want to be heard on this?

19 MS. IAFRATE: Yes, please.

20 Your Honor, regarding the non-HSU deputies, this was a
21 conversation that I had with plaintiffs' counsel many, many
22 months ago regarding how best to capture this information. It
23 was plaintiffs' suggestion that we do a CAD data dump so that
24 they could review the CAD to determine what stops they want to
25 look at. I was attempting to make certain that they get what
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1 they need.

2 The idea of doing some sort of search, one of the
3 reasons that we're here, Your Honor, is because MCSO did not
4 track these types of stops, and, therefore, there is no
5 documentation that would adequately satisfy plaintiffs'
6 request. Therefore, the CAD areas that they were interested in
7 looking at have been provided to plaintiffs' counsel so that
8 when they determine which stops they want to look at, we can
9 provide those documents to them.

10 There's no way for us to do a search regarding non-HSU
11 individuals that may have had contact with the plaintiffs'
12 class. It just wasn't tracked that way back then. It is now.

13 Regarding the Chief Knight hard drive --

14 THE COURT: Before we move on to the Chief --

15 MS. IAFRATE: Okay.

16 THE COURT: -- Knight hard drive, are there any
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17 records kept of contacts between MCSO deputies and Border
18 Patrol or ICE operatives or agents?

19 MS. IAFRATE: I don't know the answer to that
20 question, Your Honor.

21 THE COURT: All right. Could you determine the answer
22 to that question?

23 MS. IAFRATE: I could.

24 THE COURT: Please to so, and if there are, provide
25 such records to the plaintiffs.

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1 MS. IAFRATE: Very well.

2 THE COURT: Similarly, because, as I recall, there was
3 something that operated -- we referred to -- what was the
4 policy, LEAR policy? I think we called it the LEAR policy?

5 MS. IAFRATE: That was the federal government's
6 policy. It was called --

7 THE COURT: Right. And I referred to it as LEAR. But
8 it seems to me that in the operative directives underlying
9 trial, there was a directive for agents to contact their
10 supervisors and/or -- I guess there wouldn't be any 287(g)
11 folks after I entered the preliminary injunction, but would you
12 please check to see if there's any way for agents to con -- or
13 any procedure by which agents contacted their supervise --
14 deputies contacted their supervisors if they wanted to make
15 immigration holds or arrests, and if there was, provide that
16 information to --

17 MS. IAFRATE: Okay.

18 THE COURT: -- Ms. Wang.

19 MS. IAFRATE: Okay.

20 THE COURT: Ms. Wang, will that be satisfactory?

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21 MS. WANG: Yes, Your Honor. Thank you.

22 THE COURT: All right. Thank you.

23 Now, the Mackiewicz -- or the Knight hard drive, or
24 the Mackiewicz hard drive, or whatever it is that --

25 MS. IAFRATE: Yes.

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1 THE COURT: -- we're talking about.

2 MS. IAFRATE: Your Honor, I was actually doing -- I
3 received the hard drive from the monitors, and I've been
4 working with Commander Girvin regarding the Mackiewicz -- well,
5 I have to call it the Chief Knight hard drive.

6 THE COURT: That's fine.

7 MS. IAFRATE: Okay. So the Chief Knight hard drive is
8 actually a subset of the hard drive that was provided to the
9 monitors on the day that you requested that they go over and
10 get the information. Not only were they provided the relevant
11 information on that hard drive; they were also provided the
12 relevant information on Mackiewicz's H drive.

13 THE COURT: Are we talking about the Knight hard drive
14 now?

15 MS. IAFRATE: No. Okay. I'm going to start over so
16 that I don't --

17 THE COURT: No, no. Mackiewicz has his own access to
18 the H drive, which is the generally shared drive within the
19 MCSO?

20 MS. IAFRATE: All of that went onto a hard drive that
21 was ultimately provided to the monitors on that day.

22 THE COURT: I gotcha.

23 MS. IAFRATE: So the Knight hard drive was a subset of
24 what was provided -- there's actually more on the hard drive
25 that was provided to the monitors.

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1 Long story short -- or short story long, whichever --
2 the monitors, I believe yesterday, or today, agreed that they
3 do not need to look at what we're calling the Knight hard
4 drive. I was looking at that for relevance, not for privilege,
5 Your Honor.

6 THE COURT: Okay.

7 MS. IAFRATE: So I worked it out with the monitors;
8 I've not yet worked it out with plaintiffs' counsel. I thought
9 that I would start with the monitors because they were the ones
10 that were in possession of it.

11 THE COURT: All right. Chief Girvin, is that
12 accurate, as far as you're concerned?

13 CHIEF GIRVIN: Yes, Your Honor, it is.

14 THE COURT: All right. Thank you.

15 Anything else you wanted to say on that, on these
16 issues, Ms. Iafrate?

17 MS. IAFRATE: No, Your Honor.

18 THE COURT: All right. Thank you.

19 As it pertains to the 50 hard drives -- I don't know
20 whether it's you or Mr. Masterson -- were you able to arrive at
21 stipulations?

22 MR. MASTERSON: Actually, Judge, I probably should
23 have sent someone else up here.

24 Ms. Wang sent a letter yesterday afternoon concerning
25 a proposal with respect to the 50 hard drives. Just prior to
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1 that, an hour or two, Mr. Walker sent a letter proposing a
2 resolution, so maybe they should talk about it. I can work

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3 with either side and agree in the middle or agree to either
4 one, so we are working on the protocol and how we're going to
5 go about it; we just haven't reached a final agreement yet.

6 THE COURT: Okay. I did think, you know, you pointed
7 out -- I just have a thought. Let me sort of throw it out
8 there as long as folks are talking about stuff. You did point
9 out to me 26(b)(2) and the 2006 amendment, and I read that, and
10 it seems to me that what it talks about is access, and you
11 had -- well, I guess let me start back.

12 I want to make sure, and I don't mean to be offensive
13 here, but I want to make sure that we now have everything that
14 relates to the Montgomery investigation or that Montgomery
15 provided to the MCSO. Has that either been disclosed or is it
16 in the Court's -- or is it in the Court's possession?

17 MR. MASTERSON: To my knowledge -- well, if we're
18 talking to what Montgomery had, I think it's all on the
19 hard drives, which now are in the possession of the marshals.

20 THE COURT: All right. With respect to 50 -- I'm
21 sorry. I just want to make clear as we go point by point, and
22 excuse me for interrupting, those 50 hard drives, or
23 approximately 50 hard drives that the monitor has, are the
24 hard drives that Montgomery gave to the MCSO.

25 MR. MASTERSON: Correct.

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1 THE COURT: All right. And you're not aware, at least
2 as you stand here today, that there is any other information
3 that Montgomery provided to the MCSO.

4 MR. MASTERSON: That is what I don't know. If there
5 is independent documentation -- notes, anything like that --
6 that, I don't know.

7 May I confer with Ms. Iafrate for a minute?

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8 THE COURT: Sure.

9 (Pause in proceedings.)

10 MR. MASTERSON: The best I can tell you is we think
11 everything we have has been disclosed or the Court, through the
12 marshals, has taken possession, except there's one document
13 which we received this morning. The Court made an inquiry
14 yester -- excuse me, not yesterday -- last week of me about
15 whether we retained experts to take a look at the materials. I
16 was not certain about that. I thought that we had two
17 individuals look at it; whether they were retained experts, I
18 did not know.

19 I've gotten a little further information on that.
20 They weren't retained experts, what they were is former NSA
21 employees, and the hard drives were provided to them, and we
22 received this morning a two-page memo, I'll say, about those
23 hard drives.

24 Not being a computer guy, I can't tell you what
25 exactly it means, but I can tell you what I read it to mean is
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1 there's basically nothing here; that whatever Mr. Montgomery
2 told you was here isn't really -- that's not what this is. And
3 we will provide that document to the Court and the plaintiffs.

4 THE COURT: When was that document prepared, do you
5 remember?

6 (Pause in proceedings.)

7 MR. MASTERSON: I'm told November 2014.

8 THE COURT: Okay. I guess I'm just going to ask you,
9 and I appreciate you're being as forthright as you can be, but
10 I'm going to ask you to check and make sure that everything
11 that the monitor's asked for that I've otherwise ordered has

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12 been disclosed as far as you know, and to confirm that for me
13 next week. And you don't need to wait to produce the document
14 to plaintiffs and other parties that you've just identified.

15 Is that okay?

16 MR. MASTERSON: That's absolutely fine, Judge.

17 THE COURT: All right. Now, being that you just told
18 me what you told me, that may make this a lot easier, but --

19 Oh. Did you have anything else you wanted to say
20 before I go on to my thoughts?

21 MR. MASTERSON: Well, not till later, so --

22 THE COURT: That's all right. On the 26(b) thing, it
23 seems to me that you have had -- or your clients have had
24 access to these documents for years. They did have,
25 apparently --

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1 were the NSA guys MCSO employees, or were they outside
2 consultants? Or outside people.

3 MR. MASTERSON: Outside people.

4 THE COURT: And were they paid?

5 MR. MASTERSON: I don't think so, but, again, I don't
6 know the answer to that.

7 THE COURT: All right. It just seems to me that to
8 the extent that MCSO might want to preserve any right to say
9 that there was information in those hard drives, or anything
10 else provided to you by Montgomery, that would have -- that you
11 believe would have allowed Mr. Montgomery to legitimately
12 construct the kinds of materials that we've seen in the record
13 and that I've provided you this week that I saw that Ms. Wang
14 provided in conjunction with the motion to recuse, I guess it's
15 fair to say identify that stuff, and there may be no issue, and
16 if there's no issue, there's no issue. About that, at least.

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17 And so you may be able to make the stipulations that we talked
18 about last week, and maybe then I just wait and see what kind
19 of stipulations, or how -- if you can resolve this within the
20 next week. It sounds like at least there's movement being
21 made.

22 MR. MASTERSON: I think so, Judge, and I think we can
23 get to the point of agreement, based upon the correspondence I
24 saw yesterday.

25 THE COURT: All right.

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1 Any disagreement with that, Ms. Wang?

2 MS. WANG: No, Your Honor. We'll continue to meet and
3 confer on that issue.

4 THE COURT: All right. Was there anything with
5 respect to the -- I think we must have resolved the new
6 identifications found last week. Anything with respect to
7 that? Are we moving along? Have we resolved those issues?

8 MS. WANG: Your Honor, all the parties trouped down to
9 the Marshal's Office after the status conference last week, and
10 speaking for the plaintiffs, we have received copies of the
11 identification documents, at least the ones that were not
12 shredded, so we're following up with our review of those
13 documents.

14 THE COURT: Okay.

15 MR. MASTERSON: May I consult with Ms. Wang for a
16 minute, please?

17 THE COURT: Sure.

18 (Pause in proceedings.)

19 MR. MASTERSON: Thanks, Judge.

20 MS. WANG: Your Honor, I should clarify. The form in

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21 which we got copies of those identification documents was a
22 scanned copy from the Marshal's Office. There are some
23 documents and -- actually, there are some categories of
24 documents that are not very legible on those scans, so we have
25 discussed getting a color scan or photograph of those
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1 identification documents, and we are following up on that.

2 THE COURT: All right.

3 Mr. Casey's deposition date, I am informed, is
4 tentatively set for September 16th, is that correct?

5 MS. WANG: Yes, Your Honor.

6 THE COURT: My judicial assistant said, "You didn't
7 agree to go sit there during the whole deposition, did you?
8 Because we need you here throughout the day, and maybe if you
9 could just be consulted."

10 I said, well, I think I kind of did agree to go sit
11 there." Is that the parties' understanding?

12 MS. WANG: Your Honor, I didn't have an understanding
13 one way or the other. My understanding was that the Court was
14 generally available to field any issues that would come up.

15 THE COURT: All right. I am generally available, and
16 if you want me to sit there, let me know in advance.

17 MS. WANG: I believe Ms. Clark may have expressed a
18 desire that Your Honor sit there, but she's not here, so --

19 THE COURT: Do you have a position on that,
20 Ms. Iafrate?

21 MS. IAFRATE: No, Your Honor. I would leave it up to
22 Ms. Clark to make her position known.

23 THE COURT: Mr. Walker?

24 MR. WALKER: Your Honor, I may be speaking out of turn
25 here, but I just wanted to throw out a suggestion. If there

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1 were a room in the courthouse where the deposition could be
2 conducted, that might accommodate both the Court and the
3 parties a little better.

4 THE COURT: Are you amenable to that?

5 MS. WANG: That would be wonderful.

6 THE COURT: Ms. Iafrate?

7 MS. IAFRATE: That would be fine.

8 THE COURT: Mr. Como?

9 MR. COMO: Fine with me, Your Honor.

10 THE COURT: All right. I'll see if I can arrange
11 something. I would appreciate that, just in terms of trying to
12 do my other business as well.

13 (Off-the-record discussion between the Court and the
14 clerk.)

15 THE COURT: I did have a question. It seems to me, as
16 we're trying to streamline and get to what is really relevant
17 and eliminate what's not really relevant, I did hear, I think,
18 certainly we had Lieutenant Sousa's testimony in the first half
19 of the contempt hearing. All documents had not at that point
20 been provided, and I don't know whether any of the documents
21 shed any light on whether or not Lieutenant Sousa should remain
22 a party, or whether or not plaintiffs wished to present any
23 more testimony with respect to Lieutenant Sousa.

24 I understand why that may be distinct, for example,
25 with Chief MacIntyre, who plaintiffs have not yet called or who
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1 has not yet been called, but if I've heard all the testimony
2 regarding Lieutenant Sousa, in light of the prolonged nature of

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3 this hearing and its continued prolongation, I must say,
4 without making this a ruling of any sort, that I did not hear
5 anything that would suggest that Lieutenant Sousa's conduct
6 rose to the level of civil contempt.

7 If plaintiffs desire to present additional evidence
8 with respect to Lieutenant Sousa, then I guess I would like to
9 know it, and I would like to know what doc -- or if you had
10 testimony that you'd intended with respect to Lieutenant Sousa,
11 I guess I'd just like you to think about that so that we don't
12 keep parties in here that we don't need to keep if there isn't
13 really a basis to keep them any longer.

14 And I guess, although I understand your desire to
15 proceed with Chief MacIntyre, we ought to be flexible, too, to
16 the extent and notion that once we've heard from him, once
17 we've heard your evidence, you can let me know if you think
18 you've presented your evidence on him.

19 And I suppose that goes for the other parties, too. I
20 don't know if the -- I don't know if any of you have anything
21 you want to have said on that, but I would like, with respect
22 to Lieutenant Sousa, at least, since we've heard his testimony,
23 and I think we've heard all the testimony -- I don't know what
24 testimony you intend to produce, but heard a lot of testimony
25 about what Lieutenant Sousa's role was and what he did and

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1 didn't do, I at least would like to entertain the possibility
2 of, if there's an early disposition for him, taking it, or
3 making it.

4 Mr. Como, do you have anything to say on that?

5 MR. COMO: I have no position on that one way or the
6 other, Your Honor.

7 THE COURT: Mr. walker?
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8 MR. WALKER: I also have no position on it at this
9 time, Your Honor.

10 THE COURT: Ms. Iafrate?

11 MS. IAFRATE: Yes, Your Honor. I would like to
12 include some discussion regarding any evidence whatsoever
13 regarding Chief MacIntyre as it relates to civil contempt. So
14 if you're entertaining Lieutenant Sousa possibly not being a
15 defendant for civil contempt, I would also urge Chief MacIntyre
16 as well.

17 THE COURT: Well, as I just said, we haven't heard
18 from Chief MacIntyre; we have heard from Lieutenant Sousa.
19 Certainly, once we hear from Chief MacIntyre, once we've got
20 the case presented, plaintiffs' case with respect to Chief
21 MacIntyre, if I don't think there's a basis for civil contempt,
22 I'm open to dismissing him early, too, at that point.

23 Mr. Eisenberg, you're specially representing
24 Lieutenant Sousa. Do you have anything to say on that one way
25 or another?

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1 MR. EISENBERG: I would be delighted with the Court's
2 decision to eliminate him from this case, Your Honor, but I
3 understand that that isn't a decision you're prepared to make
4 today. I'll confer --

5 THE COURT: You need to have a microphone in front of
6 you.

7 MR. EISENBERG: I'll confer with the plaintiffs, Your
8 Honor, and determine what more, if anything, they need, and
9 perhaps I can help this process along.

10 THE COURT: All right. Thank you.

11 Those are my matters. Ms. Wang, anything more you

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12 wanted to raise?

13 MS. WANG: No, Your Honor. With regard to
14 Lieutenant Sousa, we'll take it under consideration, but
15 obviously would want to reserve any decision pending the
16 production of the remaining PST files. And I'd also point out
17 that he may still be needed as a witness one way or the other.

18 THE COURT: well, my excusing him as a named possible
19 contemnor does not preclude his testimony.

20 MS. WANG: Understood.

21 Your Honor, can we have a date by which defendants
22 should produce the two categories of documents relating to
23 detentions by non-HSU personnel?

24 THE COURT: Ms. Iaftrate?

25 MS. IAFRATE: Your Honor, I don't know what there is
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1 or is not, so I would ask till --

2 THE COURT: Can you have a date next week?

3 MS. IAFRATE: Yes.

4 THE COURT: And so you can consult with Ms. Wang, and
5 if you can agree on a date, fine; if not, we can take it up
6 next week.

7 MS. IAFRATE: Yes.

8 THE COURT: Okay. Thanks.

9 MS. WANG: One other issue, Your Honor. We served
10 some of the interrogatories and requests for admission that
11 Your Honor permitted us leave to propound last week yesterday.
12 we requested that the defendants respond on a shortened
13 time line of 14 days to accommodate the continuation of the
14 hearing on the 22nd, and we don't have a position from the
15 defendants yet. We tried to confer this morning before court
16 but weren't able to get an answer.

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17 THE COURT: Ms. Iafrate? Or Mr. Masterson? I don't
18 know.

19 MR. MASTERSON: One moment, please, Judge.

20 THE COURT: Sure.

21 (Pause in proceedings.)

22 MR. MASTERSON: The answer to that question is, Judge,
23 we just got them last night. I have not even reviewed them. I
24 just discussed it with Mr. Popolizio. We're not going to
25 request, obviously, the full time allowed by the federal rules,
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1 but we will work on them immediately. And we're talking with
2 plaintiffs' counsel about a lot of different things, so I will
3 consult with Mr. Young and Ms. Wang about that as well, and
4 hopefully, we can reach a satisfactory date to respond to that
5 discovery request.

6 THE COURT: All right. Did you have any issues,
7 Ms. Iafrate and Mr. Masterson, you wanted to raise?

8 MR. MASTERSON: I have a couple, or a few.

9 Number one is -- and it's possible I missed something.
10 The complaint in intervention submitted by the Department of
11 Justice along with their motion to intervene included an order,
12 and I forgot to bring it with me this morning but it said
13 something along the lines of, "If you grant our motion, Judge,
14 will you deem our complaint in intervention filed?" or
15 something along those lines. The Court --

16 THE COURT: I don't know whether I did that at all.

17 MR. MASTERSON: You did not. And so I don't want
18 to -- I don't think the complaint in intervention has been
19 filed, but I wasn't positive about that, and I didn't want to
20 get defaulted by the clerk, so --

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21 THE COURT: No. Thank you.

22 I just granted the motion to intervene, and I didn't
23 do -- or at least I don't recall taking any action with respect
24 to the complaint in intervention. There's no objection to the
25 filing of the complaint in intervention, is there?

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1 MR. MASTERSON: There is not.

2 THE COURT: All right. So I will now order that the
3 complaint in intervention be filed, and your time is running.

4 MR. MASTERSON: Thank you. Just wanted to clear that
5 up.

6 THE COURT: Thank you.

7 MR. MASTERSON: Number two is the Court inquired about
8 the possibility of resolving this matter with the ACLU last
9 Friday, and I just want to keep the Court up to date on what's
10 transpired since then.

11 THE COURT: All right. I guess that's fine, but we've
12 had a couple of different objections here about talking about
13 the content of settlement discussions.

14 MR. MASTERSON: I'm not going to talk about settlement
15 suggestions, their specifics. I'm just going to say that I did
16 reach out to Mr. Young and Ms. Wang yesterday and we've talked
17 about it, and hopefully we'll continue those discussions as we
18 move forward.

19 THE COURT: All right.

20 MR. MASTERSON: There was some concern, and I did
21 discuss with Mr. Young and Ms. Wang the possibility of asking
22 the Court to seek the assistance of a magistrate with
23 settlement discussions. And the question we all talked about
24 was we're on a very short fuse here with respect to moving
25 forward with the contempt proceeding, so taking a bunch of time

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1 for settlement discussions, if we don't know we're going to get
2 somewhere, might not be time well spent, but obviously, if we
3 were to reach an agreement, it would be time well spent.

4 But if we feel we're getting somewhere, would we have
5 any hope of getting magistrate assistance on such short notice?

6 THE COURT: I'll tell you what. I will just sort of
7 do a general blast, if the parties approve it, today to the
8 magistrate judges, saying: Are any of you available on short
9 notice?

10 But do you have any idea what kind of time range
11 you're looking at so I can -- you know, if I say that, they'll
12 say, well, when?

13 MR. MASTERSON: Yeah. I don't, Judge. What I'm
14 hoping to get from plaintiffs' counsel in the next week or so
15 is a proposal for resolution which, of course, will be proposed
16 remedies or additional injunctive relief. I'm hoping that we
17 can get some proposals on that, and then I'll have the
18 opportunity to sit down with everybody involved and then get
19 back to them in short order.

20 So right now, today, I can't tell you, but hopefully,
21 maybe by next Friday.

22 THE COURT: That would be good. I do think -- you
23 know, the magistrate judges here try their best to be very
24 helpful, and I'm sure that they would try to be available, but
25 they have schedules, too. They're pretty busy.

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1 MR. MASTERSON: Understood.

2 THE COURT: But I'm sure that if, you know, any of

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3 them could rearrange things or whatever, I expect, based on
4 their past performance, they'd do all they could to be of any
5 help.

6 MR. MASTERSON: Understood. Another issue is -- and I
7 should have asked you this last week and I just did not, and
8 that's my fault, is I was talking about seeking the billing
9 records of the monitor and the Court said: File your motion.

10 THE COURT: Um-hum.

11 MR. MASTERSON: That confused me when I got back to
12 the office, because typically I would submit a subpoena, and --

13 THE COURT: Yeah.

14 MR. MASTERSON: -- then if somebody's got a beef --

15 THE COURT: Why don't we do -- I'm sorry. Let me let
16 you finish.

17 MR. MASTERSON: If somebody's got a beef, then they
18 can move to quash the subpoena or seek --

19 THE COURT: Yeah.

20 MR. MASTERSON: -- some relief.

21 THE COURT: And I was just thinking we'd do that by
22 motion. I think -- and, you know, if you want to do it
23 expedited, expedite it, but to the extent that you're talking
24 about areas that may or may not have some privilege attaching,
25 no privilege that I've seen is absolute, so you may well be

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1 able to overcome the privilege, in light of the circumstances,
2 but the tests in the case they gave you last week and several
3 others, they're sort of laid out.

4 So I guess what I was shorthanding is if you're going
5 to ask for things that I would at least think might be
6 privileged, I would ask you to set forth what it is you want;
7 why you want it; and why you think, to the extent the privilege

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8 might apply, that you're entitled to receive it.

9 I don't mind doing those ex parte, but I think that
10 it's probably wise we be as clear as we can and -- when I said
11 "ex parte" I didn't mean "ex parte." I don't mind doing those
12 expedited.

13 MR. MASTERSON: Right.

14 THE COURT: But I think we need to be as clear as we
15 can so that everybody knows what the basis of my rulings are,
16 what the basis of your request is, and so we can proceed
17 in clarity.

18 MR. MASTERSON: Fair enough.

19 I've got one more that I hate to bring up but I have
20 to: Somewhere between 61 and 65 more IDs showed up.

21 THE COURT: Okay.

22 MR. MASTERSON: An IA number's been pulled. The
23 investigation has been started. I believe the monitors have
24 been informed. Copies of the IDs have been made and will be
25 provided to plaintiffs either by the monitors or by counsel.

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1 The investigation into it, at this point I know one
2 person has been interviewed as of Wednesday afternoon. I
3 haven't follow up since Wednesday afternoon to see where the
4 investigation was headed from there. I know one other person
5 to be interviewed was out of town, not available till next
6 Monday. So I can't give the Court any further information
7 other than that the IDs showed up, we've got them, we've made
8 copies, we've given information to the monitors, and we're
9 going to give that to plaintiffs either through the monitors or
10 directly, and an IA has been commenced on the issue.

11 THE COURT: Thank you. Were any of them involving

12 Status Conference 8-28-15.txt
12 members of the plaintiff class?

13 MR. MASTERSON: I certainly can't tell you whether
14 there are members of the plaintiffs' class. I can tell you
15 that I have been informed -- I have not seen any of them, and I
16 have not even talked to anyone who has seen them, but my
17 information is that there are a number of IDs with Hispanic
18 last names.

19 THE COURT: All right. Thank you. I appreciate and
20 expect your forthcomingness in this -- in this matter and
21 others, but appreciate it.

22 MR. MASTERSON: And that's a wrap for me, Judge.

23 THE COURT: All right. Thank you. Mr. Walker?

24 MR. WALKER: Nothing further, Your Honor.

25 THE COURT: Mr. Como?

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1 MR. COMO: I have nothing further, Your Honor.

2 THE COURT: Mr. Young?

3 MR. YOUNG: Yes, Your Honor. On the issue of
4 settlement, Mr. Masterson did accurately recite the course of
5 our discussion. I should note that we are certainly intending
6 to have further discussions on whether we can agree on some
7 remedies, although I would note that we have been receiving,
8 and continue to receive, a lot of information that will be
9 highly relevant to the issue of what type of remedy we think
10 ought to be put into place.

11 The internal investigation process is certainly very
12 important. We've recently been getting a number of IA
13 documents that are highly relevant to the issue of a remedy. I
14 think we're continuing to get them. We've heard just now that
15 there will be some more coming. We'll want to look at those in
16 order to be able to propose a remedy to try to prevent the

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17 kinds of abuses that have occurred.

18 In addition, we do have the 16,000 documents coming
19 out of the PST archives of the people who are highly relevant.
20 We did receive several hundred of those last Monday, Monday
21 this week. I understand that we'll be receiving a bunch more
22 today and Monday, but we don't know when we'll get the last of
23 those. And generally speaking, at least in my experience, one
24 is in the best position to figure out what a settlement is when
25 one has the information that is relevant to the case and to the
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1 proposed remedy, so we'll do our best.

2 THE COURT: Well, I understand that, and I, you know,
3 do not expect you to settle this basis -- settle this case on
4 any basis other than one that you can find acceptable after
5 being fully informed.

6 It does seem to me, Ms. Iafrate, unless I misremember,
7 that even had I granted your motion for an extension, which I
8 didn't do, you would have provided all of that information
9 prior to the next time we have a status conference, so I assume
10 they're going to have it, plaintiffs will have it prior to the
11 next status conference.

12 MS. IAFRATE: Yes, Your Honor. We have six people
13 working on it full time.

14 THE COURT: Thank you very much.

15 MR. YOUNG: Thank you, Your Honor.

16 THE COURT: All right. Let's see, is the next status
17 conference next Friday?

18 MR. YOUNG: I believe it is.

19 THE CLERK: Yes, Judge.

20 THE COURT: We'll see you then. Thank you.

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21 MR. KILLEBREW: Your Honor? Your Honor, this is Paul
22 Killebrew for the United States.

23 THE COURT: Yes.

24 MR. KILLEBREW: Could we raise a couple of issues with
25 the Court?

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1 THE COURT: Yes.

2 MR. KILLEBREW: Thank you. First of all, on discovery
3 matters, we just want to be sure that the parties are providing
4 discovery to the United States when it's provided to the
5 plaintiff class as well. And related to that, there's some
6 discovery that was previously provided to plaintiffs' class
7 under an attorneys'-eyes-only designation.

8 we've worked on getting as much information as we can,
9 but the plaintiffs would prefer us to make a request directly
10 to the defendants for those kinds of materials. We would like
11 to do that, but it may require -- we don't know if discovery is
12 going to close on September 22nd at the start of the hearing.

13 THE COURT: well, that is -- discovery, hopefully,
14 will be closed well before then, but it seems to me -- and
15 again, I don't intend any criticism by this comment, but
16 Mr. Masterson, in candor, has come forth and identified 65
17 additional documents, or 65 additional identifications today,
18 and so I'm not going to remove defendants from any obligation
19 to continue to provide relevant information that they discover.
20 But I will take them at their word that as far as they know,
21 they have provided all the information they had, except to the
22 extent they have identified that they haven't provided it for
23 some reason, or that they're in the course of providing it.

24 So yes, I expect all discovery will be well closed
25 prior to that, but I'm not going to remove any obligation that

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1 defendants have to continue to provide relevant information,
2 and I assume they're doing that to the best of their ability.

3 MR. KILLEBREW: Your Honor -- oh, I'm sorry.

4 THE COURT: I'm sorry. There wouldn't be any
5 objection to providing all the information you're providing to
6 plaintiffs to the plaintiff-intervenors in this case, would
7 there, Ms. Iafrate?

8 MS. IAFRATE: No, and I believe that we are doing
9 that.

10 THE COURT: Okay. And about the attorneys'-eyes-only
11 designation, do you have any concern if the Department of
12 Justice contacts you directly about receiving that information?

13 MS. IAFRATE: No, Your Honor.

14 THE COURT: All right. Does that take care of your
15 concerns and issues?

16 MR. KILLEBREW: Yes, one of them, Your Honor. I have
17 an additional one related to discovery as well.

18 THE COURT: All right.

19 MR. KILLEBREW: We are considering the possibility of
20 retaining an expert. In recognition that the Court is going to
21 be considering additional injunctive remedies, we believe an
22 expert's testimony could be very helpful, and especially in the
23 area of internal accountability of explaining what kind of
24 remedies may be appropriate or would prevent future violations
25 of the law. But to do so, we think that that will not be

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1 completed by September 22nd, especially if the defendants would
2 want to depose the expert, as we expect they would. We also

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3 think the expert would probably be best suited to do his work
4 after the monitor has filed his report on the IA investigations
5 resulting from the Armendariz suicide.

6 So we just wanted to flag this for the Court and also
7 get the Court's guidance on the timing of when an expert could
8 come in.

9 THE COURT: Do you have any reaction to that
10 immediately, Mr. Masterson? Ms. Iafrate?

11 MR. MASTERSON: Well, my initial reaction is no. If
12 it is allowed, then we're going to have to deal with
13 26(a)(2)(B) reports, depositions --

14 THE COURT: You know, I must say initially my reaction
15 was the monitor's kind of the court-appointed expert on this
16 issue, and that's what the report is related to, anyway. And I
17 assumed that we were all going to go forward with the monitor's
18 report based on our discussion last week.

19 So that doesn't mean I'm going to tell the Department
20 of Justice no, but my inclination, I share some of the same
21 concerns you have, Mr. Masterson. Why don't I let the parties
22 think about it this week, talk about it, and then we can decide
23 next week how we intend to approach it.

24 MR. MASTERSON: Thank you.

25 MR. KILLEBREW: Thank you, Your Honor.

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1 MR. GOMEZ: Your Honor, this is Raphael Gomez from
2 Civil Division. I wanted to raise one matter with you.

3 THE COURT: All right.

4 MR. GOMEZ: Your Honor, with respect to the 50
5 hard drives, the United States -- and I understand there was
6 some proposal, though I didn't hear what it was from
7 Ms. Wang --

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8 THE COURT: Do you know what, Mr. Gomez? The Court's
9 audio here tends to distort people, and so you're starting --

10 MR. GOMEZ: Yes, Your Honor.

11 THE COURT: -- you're starting to slur in a way I
12 can't quite understand you; and I'm not saying you're slurring,
13 but it kind of comes across a little unclear.

14 Could I have you speak very slowly, distinctly, and
15 loudly, so we can understand you, please?

16 MR. GOMEZ: Yes, Your Honor. The United States, with
17 respect to the 50 hard drives, in terms of reviewing them, is
18 proposing that a small sample be pulled from the 50
19 hard drives; that a forensic copy be made by a vendor there, a
20 cleared vendor there in the Phoenix area; and that that sample
21 be reviewed by the government with respect to whether there's
22 any classified information, you know, in the 50 hard drives,
23 and hopefully, that could be resolved through a review of the
24 sample.

25 THE COURT: All right. why don't you provide the
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1 parties with the specifics of your proposal, and I'll either
2 approve it or not next week, or hear objections to it.

3 MR. GOMEZ: Yes, Your Honor.

4 THE COURT: All right. Anything else?

5 All right. We'll see you next week, then.

6 (Proceedings concluded at 10:23 a.m.)

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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly
appointed and qualified to act as Official Court Reporter for
the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control.

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17 DATED at Phoenix, Arizona, this 2nd day of September,
18 2015.

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s/Gary Mo11

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EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega Melendres,)	
et al.,)	
)	
Plaintiffs,)	No. CV 07-2513-PHX-GMS
)	
vs.)	Phoenix, Arizona
)	July 31, 2015
Joseph M. Arpaio, et al.,)	2:03 p.m.
)	
Defendants.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
Status Conference Volume 1, Pages 1-70
(Sealed Proceedings Omitted)

Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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Also present:

Commander John Girvin, Deputy Monitor - Telephonically

Chief Raul Martinez, Deputy Monitor - Telephonically

Executive Chief Brian Sands

Chief Deputy Gerard Sheridan

Deputy Chief Jack MacIntyre

Lieutenant Joseph Sousa

P R O C E E D I N G S

THE CLERK: Civil case number 07-2513, Melendres and others versus Arpaio and others. This is the time set for status conference. Counsel, please announce for the record.

14:03:06

MS. WANG: Good afternoon, Your Honor. Cecillia Wang of the ACLU for the plaintiffs.

MR. YOUNG: Good afternoon, Your Honor. Stanley Young for the plaintiffs.

MR. BENDOR: Good afternoon. Josh Bendor of the ACLU for plaintiffs.

14:03:17

MS. PEDLEY: Lauren Pedley of Covington & Burling for plaintiffs.

MR. POCHODA: Dan Pochoda of the ACLU for plaintiffs.

MS. IAFRATE: Good afternoon, Your Honor. Michele Iafrate on behalf of defendant.

14:03:28

MR. POPOLIZIO: Good afternoon, Your Honor. Joseph Popolizio on behalf of Sheriff Arpaio.

MR. WALKER: Good afternoon, Your Honor. Richard Walker of Walker & Peskind on behalf of that portion of Maricopa County government embodied in the Board of Supervisors, the county manager, and the employees reporting to them.

14:03:40

MR. COMO: Greg Como on behalf of Brian Sands, who is present in the courtroom today, Your Honor.

14:03:55

1 MR. McDONALD: Good afternoon. Mel McDonald, special
2 appearance for Sheriff Joe Arpaio.

3 MR. JIRAUCH: Charles Jirauch of Walker & Peskind on
4 behalf of Maricopa County.

5 MR. STEIN: Good afternoon, Your Honor. Lee Stein on
6 behalf of Jerry Sheridan, who's present in the courtroom.

14:04:10

7 MR. BIRNBAUM: Good afternoon, Your Honor. Gary
8 Birnbaum on behalf of Jack MacIntyre, and Mr. MacIntyre's
9 present in the courtroom as well.

10 MR. McLAUGHLIN: Good afternoon, Your Honor. Jake
11 McLaughlin on behalf of Thomas Liddy and Christine Stutz.

14:04:25

12 MR. EISENBERG: Good afternoon, Your Honor. David
13 Eisenberg on behalf of Lieutenant Joseph Sousa, who's in the
14 courtroom in the gallery.

15 MS. HAMILTON: Good afternoon, Your Honor. April
16 Hamilton, Ridenour Hienton, on behalf of the Maricopa County
17 Attorney's Office and Maricopa County Attorney William
18 Montgomery.

14:04:38

19 MS. CLARK: Good afternoon, Judge. Karen Clark,
20 ethics counsel for Tim Casey.

14:04:50

21 THE COURT: Do we have monitors on the line?

22 DEPUTY MONITOR GIRVIN: Here, Your Honor. Deputy
23 Monitor Girvin on the line.

24 DEPUTY MONITOR MARTINEZ: And good afternoon, Your
25 Honor. Raul Martinez, deputy monitor, on the line.

14:05:06

1 THE COURT: Do we have anybody else on the line?

2 MR. SEGURA: Andre Segura of Covington & Burling on
3 behalf of plaintiffs.

4 MS. ALBARRAN: Good afternoon, Your Honor. Tammy
5 Albarran from Covington & Burling on behalf of the plaintiffs. 14:05:18

6 THE COURT: All right. Good afternoon.

7 Mr. Como, you filed with me a -- sort of a protective
8 concern about trial date. Have you resolved that?

9 MR. COMO: Yes, Your Honor. We settled that other
10 case this week so I no longer have a conflict. 14:05:32

11 THE COURT: All right. Let me just say I'm going to
12 ask the parties to hold some dates and we're going to hold the
13 dates because we need flexibility. After I announced trial
14 dates, or dates for the resumption of the hearing -- and I
15 think we can hold those dates, at least -- the monitor informed 14:05:51
16 me that he will be unable to make any of those dates. I don't
17 think we need the monitor here to have the hearing; he has key
18 members that are perfectly adequate to cover for him. But it
19 did strike me that to the extent we are having him evaluate the
20 MCSO self-investigations and to the extent that is an issue in 14:06:10
21 this lawsuit, the monitor may well need -- somebody may well
22 want him to testify at some point, so we're going to need to
23 set additional hearing dates.

24 Further, I'm going to raise some additional issues,
25 which may require -- or at least will give the parties the 14:06:25

1 option to explore different issues if they wish to. And I do
2 not want to continue this hearing forever, I suspect no party
3 wants to continue this hearing forever, so I'm going to throw
4 out some dates right now and ask you to hold them -- I asked
5 you to bring your calendars -- and if you know that those won't
6 work for you, please tell me now.

14:06:41

7 In addition to September 22nd through September 25th
8 and September 29th through October 2nd, which were the dates
9 that I already told everybody to hold, can people hold the 8th
10 and 9th of October? Any problem with the 8th and 9th of
11 October?

14:07:00

12 I will tell you that the monitor is not available on
13 those dates, either, but if we need them we can have them, if
14 they're available, so I'll have everybody hold those dates.

15 October 13 and 14, the monitor is available on those
16 dates, if in fact his testimony is going to be needed in this
17 matter. Does that work for everybody?

14:07:18

18 Seeing no objections.

19 And then we could also go the 27 through the 30th.
20 However, before -- and look at that. Before I discuss the 27th
21 through the 30th, we could also go November 2nd through the 6th
22 and the 12th and 13th. But I already have a firm trial set on
23 that date. I've checked with the parties, and they have no
24 objection to giving up those dates if they can have the 27
25 through the 30 dates of October, the end of October.

14:07:39

14:08:00

1 So I would ask the parties to hold the 13th through
2 the -- October 8th in addition to the dates already held: 8, 9,
3 13, 14, 27 through 30, November 2, 3, 4, 5, and 6, November 10,
4 November 12, and 13. If anybody has any problem holding those
5 dates, please let me know right now.

14:08:22

6 As soon as I can -- as soon as we can get preferences,
7 as soon as I go through what I intend to do today, we will try
8 to free up the dates for you so you're not just sitting on
9 those dates; I realize you're all busy people. But I also
10 intend -- this won't be a surprise to anybody -- to hold status
11 conferences fairly regularly, almost every week, so that we can
12 make adjustments as we go along.

14:08:37

13 The other thing that occurred to me is that even
14 though Mr. Warshaw is not available on some dates, so we'll
15 have to hold some dates out of the current trial date, it
16 occurred to me, after considering some of the things that
17 Mr. Masterson said last week, that really there may be whole
18 areas, after the monitors do the interviews they're now doing
19 and after they provide you with transcripts of those
20 interviews, there may be a whole host of areas we can eliminate
21 by stipulation that won't require a lot of trial testimony.

14:08:53

14:09:12

22 For example, and maybe I'm misremembering this, but if
23 the material provided by Mr. Montgomery, the database that he
24 supposedly took from the CIA that included the 50 hard drives
25 that I had taken -- or that the sheriffs provided under my

14:09:36

1 order last week, if in fact there's a stipulation by all sides
2 that that material is junk, then I don't see why we have to
3 spend a whole lot of time on other issues that may involve the
4 50 hard drives but don't relate to this lawsuit. It does seem
5 to me that they relate to the lawsuit to the extent that they
6 are junk and to the extent they were told -- or Mr. Montgomery
7 was told -- or told the MCSO what they were and what he was
8 using them for. But we don't have to -- if there's a
9 stipulation by all sides that they're junk, we don't have to
10 waste a whole lot of time messing around with stuff like that.

14:09:56

14:10:13

11 I offer that merely as an example; I don't offer it as
12 a mandate. It may well be that when we look in the 50
13 hard drives there is something that's relevant, although that
14 is a huge amount of material, so it seems to me that would be
15 one area where we could just sort of eliminate a lot of
16 problems.

14:10:30

17 It seems to me, too -- and I received a summary from
18 the monitor that I think you all heard last week. I haven't
19 looked at the investigations or seen the transcripts, but as I
20 said last week, the transcripts are available to any party or
21 specially appearing party who wants them. But it occurs to me
22 that other issues that come forth in the transcripts may not be
23 seriously disputed by any side, and if we can just arrive at
24 stipulations, we may be able to shorten the resumed hearing
25 considerably. I just offer that for what it's worth.

14:10:49

14:11:07

1 And so with that being said, I did notice that
2 Maricopa County and the Sheriff's Office filed this week a
3 Statement For Proposed Deadlines Re Document Production.

4 Now, let me ask, it is more convenient for my
5 schedule, because I usually do criminal matters on Monday, I do
6 trials Tuesday, Wednesday, Thursday, sometimes Friday, I keep
7 Friday open for my civil dates, it's much more convenient for
8 me to do regular status conferences on Fridays, and you have
9 set the deadlines, Ms. Iafrate, Ms. Walker, you've set the
10 deadlines for document productions on Friday.

14:11:30

14:11:49

11 I'm wondering if we can move them one day earlier, so
12 that when I have the status conference, I can get a report as
13 to whether or not you produced the documents that were due the
14 day before, so that we don't have a whole lot of slippage that
15 I tolerate in terms of the document productions.

14:12:04

16 Do you understand what I'm saying?

17 MR. WALKER: Yes, Your Honor.

18 MS. IAFRATE: Yes.

19 THE COURT: Is it possible to take the deadlines that
20 you've suggested -- and I'm not --

14:12:15

21 I'll hear from you, Ms. Wang, in terms of whether or
22 not, you know, you have any concerns about that, but I'm just
23 asking if it's possible to take those deadlines and move them a
24 day earlier so that the very next day I'll be here. I'll know
25 whether you've produced the documents. If you haven't, we can

14:12:27

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1 deal with the matter.

2 MS. IAFRATE: Your Honor, that's fine today with the
3 deadline for certain documents and they have been provided, so
4 with the exception of today's deadline, you're asking that the
5 ones in the future be moved back one day.

14:12:41

6 THE COURT: Right.

7 MS. IAFRATE: That's fine.

8 THE COURT: From Friday to Thursday.

9 MR. WALKER: And the County has no objection, either,
10 Your Honor.

14:12:48

11 THE COURT: All right. Does the plaintiff have any
12 concerns with that or with the proposal generally offered by
13 the County and the sheriff and the MCSO?

14 MS. WANG: No, Your Honor. And we appreciate the
15 production before each status conference; that makes good
16 sense.

14:13:00

17 THE COURT: All right. So let me just say that
18 last -- not last week but last status conference, which was
19 about closer to two weeks ago, we discussed both Mr. Walker's
20 and Ms. Iafate's objection and motion to the class definition.
21 I indicated that I wasn't going to rule on that at that time,
22 so for those of you who look at your docket and you're worried
23 about outstanding little gavels that show I haven't ruled, I'm
24 not going to rule on that until we decide what is necessary for
25 reparations to those who were harmed by the violation of my

14:13:26

14:13:50

1 preliminary injunction. I don't see any need to do that. It's
2 still an open issue, except to the extent that I did rule that
3 it's relevant and needs to be turned over, and I assume that
4 you are incorporating that in your schedule, Ms. Iafrate,
5 Mr. Walker.

14:14:09

6 MS. IAFRATE: Your Honor, that is in the schedule as
7 it relates to item 6, so a deadline has been set, subject to
8 our objections that you already heard last time.

9 THE COURT: All right. So document 1085 as well,
10 which is the motion to compel production of Internal Affairs
11 reports, looks to me like that is also taken care of in
12 defendants' statement re proposed deadlines.

14:14:24

13 Ms. Wang?

14 Ms. Iafrate, did you want to address that?

15 MS. IAFRATE: I was just going to say, Your Honor, we
16 met and conferred regarding all of the outstanding motions to
17 compel issues as well as the document requests, and, yes, the
18 outstanding request for the IA has been addressed in our
19 recommended deadline.

14:14:39

20 THE COURT: Ms. Wang?

14:14:51

21 MS. WANG: Your Honor, there's one outstanding issue
22 that we're currently meeting and conferring on, and that is how
23 to limit the definition of items, Internal Affairs
24 investigations going back to 2008. That may be a different
25 item in your list, but --

14:15:09

1 THE COURT: No, no. That is an item that is in
2 defendants' proposed deadlines. I think it's, like, number 9
3 or number 10.

4 MS. WANG: Right. We have agreed in principle, I
5 think, on how to limit that request, and Ms. Iafrate's
6 requested that we reduce that to writing for her, and we're in
7 the process of doing so.

14:15:23

8 THE COURT: All right. Now, let me --

9 Oh. Go ahead, Ms. Iafrate.

10 MS. IAFRATE: Your Honor, I think that in response to
11 your previous question of me, it's number 8 on the deadlines
12 that talks about the -- essentially, what we were calling
13 spin-off IAs, the remaining 19 or 20, plus the two that were
14 originally sent to Mr. Vogel and then returned, so that also
15 has been addressed in the deadline.

14:15:34

14:15:51

16 THE COURT: Yes, it seems to me that 7 and 8 address
17 the matters you've just addressed, both 7 and 8.

18 Yes, Mr. Eisenberg.

19 MR. EISENBERG: Your Honor, I don't mean to interrupt
20 the flow but I've checked my calendar. I do have a case in
21 this courthouse starting November the 3rd, United States versus
22 Aceves-Rivera. It's a multi-defendant case, but I can avow to
23 the Court that it will actually go on that date.

14:16:04

24 THE COURT: Okay. Well, I appreciate your pointing it
25 out. I'll keep it in mind and remember you pointed it out, but

14:16:21

1 to the extent that we get next billing, I want next billing in
2 case that case goes away.

3 MR. EISENBERG: Yes, Your Honor.

4 THE COURT: All right. Thank you.

5 Let's take up, then, Mr. Casey's objection to
6 number 10, Ms. Iafrate.

14:16:32

7 Ms. Clark, are you here to address that?

8 MS. CLARK: I'm here, Your Honor, for any questions
9 you may have.

10 THE COURT: Well, it does seem to me, Ms. Iafrate,
11 that Ms. Clark's objection is well taken. If you have the
12 documents, if you're asserting the privilege, then I'm not sure
13 that Mr. Casey ought to be obliged to assert the privilege of
14 his own time and expense.

14:16:46

15 MS. IAFRATE: Understood, Your Honor. I provided
16 documents responsive to discovery requests and asserted the
17 privilege as it relates to the subset of documents that I have
18 that involved Tim Casey. Then there was a subpoena deuces
19 tecum and a subpoena that went to Tim Casey and his counsel.
20 They provided me their documents that they gathered. I went
21 through it for a privilege, created the privilege log, and then
22 sent it back to Ms. Clark, because it's the subpoena that goes
23 to her that these documents would be responsive to. I've
24 already done the privilege identification and created the log
25 on behalf of my client.

14:17:00

14:17:19

14:17:36

1 THE COURT: All right. Ms. Clark?

2 MS. CLARK: Yes, Your Honor. I don't really have much
3 to add to the objection that we filed. I mean, Tim Casey was
4 withdrawn from this matter in December of last year and this is
5 a dispute between parties. 14:17:49

6 THE COURT: Let me just see if I understood what
7 Ms. Iafrate just told me, because maybe I didn't.

8 Ms. Iafrate, are you authorizing Mr. Casey to turn
9 over every document except for the documents that are listed in
10 your privilege log? 14:18:03

11 MS. IAFRATE: That is correct of the documents that
12 were provided to me by his counsel, I went through them to
13 assert my client's privilege and that has been done.

14 THE COURT: All right. So those documents can be
15 provided immediately as well as the privilege log can be
16 provided immediately. 14:18:13

17 Is that correct, Ms. Iafrate?

18 MS. IAFRATE: They were sent back to Tim Casey's
19 counsel for that purpose.

20 THE COURT: Okay. So you have no objection if
21 Mr. Casey produces all documents that they provided -- that
22 they identified to you that are not contained in the privilege
23 log you sent back to them. 14:18:25

24 MS. IAFRATE: Correct.

25 THE COURT: And you have no problem if they provide 14:18:38

1 the privilege log.

2 MS. IAFRATE: I would assume that they would.

3 THE COURT: All right. Can you do that immediately,
4 Ms. Clark?

5 MS. CLARK: Judge, I can get that done on Monday,
6 August 3rd.

14:18:46

7 THE COURT: All right. Thank you.

8 Is that satisfactory to the plaintiffs?

9 MS. WANG: Your Honor, the production on the 3rd is
10 satisfactory. I just want to flag two issues for the Court.

14:18:56

11 We have raised two issues about Tim Casey's production
12 in response to our subpoena duces tecum, both with Ms. Clark
13 and with Ms. Iaftrate. First, we believe that Mr. Casey's
14 search for the documents was inadequate. We have documents
15 from the defendants that should be in Mr. Casey's possession.
16 For example, if they're e-mails that went to him that were not
17 produced or listed in his privilege log that was provided from
18 Ms. Clark.

14:19:19

19 Second, we also believe that there are some privilege
20 issues remaining. We're still meeting and conferring about
21 that. We intend to take that up again once we get the new
22 production on August 3rd, but I alert the Court just because
23 there may be some additional matters we want to take up with
24 you.

14:19:37

25 THE COURT: Let me just suggest, then, that in

14:19:51

1 addition to the subpoena that you serve Mr. Casey you serve a
2 document production request to the defendants that encompasses
3 those same subpoena matters, and then to the extent that the
4 defendants have maintained or have matters in their file that
5 Mr. Casey has not retained, they will have to assert an
6 additional privilege log.

14:20:05

7 Is that a fair suggestion?

8 MS. WANG: That certainly is. I believe we already
9 have done so, but we will double-check that.

10 THE COURT: All right. Because I assume, Ms. Clark --
11 well, you represented, I think, in your pleading, that
12 Mr. Casey had reviewed everything that he had retained.

14:20:17

13 MS. CLARK: That's correct, Judge.

14 THE COURT: Okay. So if you have that issue,
15 Ms. Wang, you can act as you deem best fit, but you'll provide
16 what you have on August 3rd together with the privilege log
17 given you by Ms. Iafrate?

14:20:30

18 MS. CLARK: Absolutely, Judge.

19 THE COURT: All right.

20 Yes. Ms. Wang, anything else?

14:20:41

21 MS. WANG: No, Your Honor. Thank you.

22 THE COURT: All right. We do have issues, of course,
23 that arise from the documents that came to light last week, and
24 I guess before we take those up I'm going to check with the
25 monitors as to any developments this week in terms of new

14:21:05

1 documents found, a concern about whether or not we've got all
2 the documents or tried to get all the documents that were
3 identified last week, and any other issues of potential
4 cooperation.

5 Are you there? Do you hear me?

14:21:23

6 DEPUTY MONITOR MARTINEZ: Yes, Your Honor.

7 Chief Martinez, deputy monitor, and hopefully you can hear me
8 fine in the courtroom also.

9 Yes, we do have a couple of issues to bring up --

10 THE COURT: Chief?

14:21:33

11 DEPUTY MONITOR MARTINEZ: -- to the Court.

12 THE COURT: Chief?

13 DEPUTY MONITOR MARTINEZ: Yes, sir.

14 THE COURT: We can hear you here, but the speakerphone
15 always provides a bit of distortion. And so the court reporter
16 can get down everything you're saying, I'm going to ask you to
17 speak as slowly and distinctly as possible so that we can all
18 hear you, please.

14:21:43

19 DEPUTY MONITOR MARTINEZ: Yes, Your Honor. We do have
20 a couple of issues to bring up to the Court's attention, the
21 first one being last Friday, the 24th, Chief Warshaw and myself
22 went to PSB and met with Lieutenant Kratzer, wherein we were
23 taking a look, our first look at the 1459 slash 1500 IDs.

14:21:58

24 During that meeting with Lieutenant Kratzer, a
25 question was asked if there were any other instances of found

14:22:21

1 IDs, cases with IDs, that was not mentioned at the Monday
2 briefing with PSB, not to include the 1500. Lieutenant Kratzer
3 mentioned yes, that there was one additional instance where 42
4 additional IDs were found in the training kit that belonged to
5 one of the sergeants, and that they had opened an IA case on
6 the IA number 15-0475. 14:22:47

7 Our concern is neither the order of the 24th that you
8 filed about the hard drives nor the order of the 27th has the
9 two DR numbers which match the casing that PSB informed us on
10 Monday covering those 42 IDs. That's one of the concerns -- 14:23:15

11 THE COURT: All right.

12 DEPUTY MONITOR MARTINEZ: -- that we need to get ahold
13 of those IDs just last week, just as the other two DR numbers
14 where IDs were -- were gathered.

15 THE COURT: All right. If you have other concerns,
16 hang on to them for a second. 14:23:29

17 Ms. Iafrate?

18 MS. IAFRATE: Your Honor, I do believe that that IA
19 number and the information was provided to the monitors during
20 a weekly report. They might be backlogged in their weekly
21 reports because we issued a -- or you issued what we perceived
22 to be a stay. So once the stay was lifted, we pushed out all
23 of the back weekly reports, and I believe that that case is in
24 the weekly report. But if you want to issue another order to
25 encompass this DR, I can go back and make certain that it was 14:24:06

1 indeed previously provided.

2 THE COURT: I'll do that. If I understood the chief
3 correctly, it's an IA number --

4 MS. IAFRATE: It is.

5 THE COURT: -- not a DR number.

14:24:17

6 MS. IAFRATE: It is, but a lot of IAs have DRs going
7 with it, yes.

8 THE COURT: All right. The only thing I want to make
9 sure of is that we get the plaintiffs, all the identifications
10 of members of the plaintiff class, to the extent that's still
11 possible, that are roaming around anywhere in the MCSO. So if
12 these haven't been provided, I will issue an order directing
13 you to provide them. If you can determine that they've already
14 been provided pursuant to my other orders, then please identify
15 which ones they are.

14:24:27

14:24:43

16 MS. IAFRATE: Very well.

17 THE COURT: Okay. Chief, anything else?

18 DEPUTY MONITOR MARTINEZ: Yes, Your Honor. Just one
19 last statement about this Lieutenant Kratzer instance. I'm not
20 doubting what Ms. Iafrate is saying. There's a lot of
21 information that was dumped in the -- during the -- or after
22 the stay period, but I want to make sure that they were --

14:24:56

23 THE COURT: You know what?

24 Chief. Chief. Chief. Chief. You're starting to go
25 too fast and we can't follow you. You have to go slowly.

14:25:09

1 DEPUTY MONITOR MARTINEZ: All right, sir. I
2 apologize.

3 THE COURT: It's all right.

4 DEPUTY MONITOR MARTINEZ: I want to make sure that
5 what we're asking for is not just a copy of the IA number, but
6 copies of those 42 IDs. 14:25:18

7 THE COURT: Right. Well, I think that what the order
8 will direct, just because I've -- the monitor's now -- I'm
9 sorry, not the monitor, the marshal is now holding those IDs,
10 I'll just direct that the IDs be given to the marshal and so we 14:25:34
11 have them in one central location.

12 Will that meet your concerns, Chief?

13 DEPUTY MONITOR MARTINEZ: Yes, sir, it would.

14 And if I may, there are a couple of other issues that
15 we have communicated with Ms. Iafrate that she has informed us 14:25:54
16 of some confidentiality that is involved with those issues, so
17 she may want to address the Court before we speak about it.

18 THE COURT: Ms. Iafrate.

19 MS. IAFRATE: Your Honor, the monitors and I discussed
20 this issue this morning. I asked them to please not present 14:26:11
21 this issue in open court, as it would potentially compromise an
22 investigation. I don't know if Your Honor would be amenable to
23 clearing the courtroom regarding this issue or if we could take
24 it up some other way rather than in open court, because there
25 is a confidentiality issue that I'm concerned about regarding 14:26:34

1 one of the monitor's requests.

2 THE COURT: What is the confidentiality issue?
3 Pursuant to what statute or privilege?

4 MS. IAFRATE: It's a concern regarding compromising a
5 criminal prosecution. 14:26:49

6 THE COURT: All right. Let me make this suggestion.

7 I'm going to go through everything else that we have
8 to go through, and then at the end I will hear you under seal
9 on your representation that you believe that there may be
10 issues that should be taken up under seal. If I determine that 14:27:11
11 there is no reason to seal, then I'll open the transcript.

12 Will that be acceptable to you?

13 MS. IAFRATE: That's fine, Your Honor.

14 THE COURT: All right. Does anybody else have any
15 objection to proceeding in that fashion? 14:27:23

16 MS. WANG: No object -- excuse me. No objection, Your
17 Honor.

18 THE COURT: All right. Chief, anything else?

19 DEPUTY MONITOR MARTINEZ: Yes, Your Honor. There was
20 a second document that we are waiting for Ms. Iafrate to -- to 14:27:34
21 release. It had to do with some minutes of a meeting.
22 Ms. Iafrate stated she was reviewing it for any privileges, and
23 we have not received any -- any response since our last
24 conversation with her as to whether it's going to be a release
25 in full or we are going to get a redacted version of that 14:27:59

1 document.

2 THE COURT: All right. And that request was made to
3 Ms. Iafrate when?

4 DEPUTY MONITOR MARTINEZ: It was made in writing
5 yesterday after an interview that we conducted, and we had a
6 conversation about this document this afternoon.

14:28:08

7 THE COURT: Can you identify the document at all, like
8 who -- who was the author, and what it was prepared in
9 conjunction with?

10 DEPUTY MONITOR MARTINEZ: Yes, Your Honor. During an
11 interview of Lauren Sanchez, who is, I believe, an analyst
12 assigned to PSB for the Maricopa County Sheriff's Office. And
13 she was the scribe at the Friday, July 17th, meeting with PSB
14 and counsel in preparation for the monitor's visit.

14:28:29

15 THE COURT: All right. And you're reviewing that for
16 attorney-client privilege, Ms. Iafrate?

14:28:49

17 MS. IAFRATE: Yes, Your Honor. Actually, I received
18 the request after-hours last night; I didn't see it until this
19 morning.

20 THE COURT: No problem. I'll give you a reasonable
21 time to review it. If you are going to redact any of it, would
22 you please file a privilege log indicating -- or the document
23 itself may indicate these actions, but just if you're going to
24 redact any of it, let us know.

14:29:00

25 MS. IAFRATE: Very well.

14:29:12

1 THE COURT: Anything else, Chief?

2 DEPUTY MONITOR MARTINEZ: Your Honor, I believe
3 Commander Girvin has an item.

4 THE COURT: All right. Chief Girvin?

5 DEPUTY MONITOR GIRVIN: Yes, Your Honor. Can you hear 14:29:21
6 me okay?

7 THE COURT: Yes, we can hear you. But again, as with
8 Chief Martinez, you need to speak slowly, because there is some
9 distortion because of the speakerphone.

10 DEPUTY MONITOR GIRVIN: Yes, Your Honor, I will do 14:29:33
11 that.

12 As you're aware, Your Honor, that we are in possession
13 of a hard drive which we received from MCSO pursuant to our
14 initial document request in the wake of the April hearings. We
15 received that hard drive from Chief Knight. Chief Knight was 14:29:50
16 designated by the defendants as our point of contact for these
17 document requests.

18 Chief Knight was interviewed this past week by our
19 monitor and during the course of that interview it was revealed
20 that the hard drive that was initially provided to us, which is 14:30:11
21 purported to have the Montgomery investigation material, is
22 actually a compilation of material from a couple of different
23 sources.

24 The first source is a hard drive that apparently
25 Detective Mackiewicz brought into Chief Knight's office when he 14:30:33

1 responded to Chief Knight's request that he provide, you know,
2 the relevant documents. And when Detective Mackiewicz was in
3 Chief Knight's office, he asked Chief Knight and was granted
4 access to his office computer so that Detective Mackiewicz
5 could access the department's H drive.

14:30:56

6 The H drive is really a shared drive that every
7 employee in the office will let -- can get to and use to store
8 documents, so it functions like a hard drive, but it's a large
9 drive that's maintained by the office and you have to log into
10 it. So Detective Mackiewicz was allowed to log into his
11 section of the H drive on Chief Knight's computer.

14:31:16

12 So we were informed that the contents of the
13 hard drive which we were provided immediately after the April
14 hearing is actually a compilation of material that Detective
15 Mackiewicz had on the personal hard drive which he brought to
16 Chief Knight's office and material which he downloaded to --
17 from the H drive. That was downloaded to two hard drives: One
18 was provided to us, and the other we were told was provided to
19 Ms. Iafrate.

14:31:36

20 During questioning then Chief Knight volunteered that
21 he still has in his possession, and has had since that meeting,
22 the original hard drive that Detective Mackiewicz brought to
23 his office. So we are requesting that we be allowed to take
24 possession of that hard drive, which is really the source
25 material, or supposedly the source material, for a copy that we

14:31:56

14:32:16

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1 were provided in April.

2 THE COURT: Let me ask you some questions to make sure
3 I understand. Detective Mackiewicz brought in a hard drive, or
4 the material from the H drive was downloaded to the hard drive?

5 DEPUTY MONITOR GIRVIN: He brought in a hard drive, a 14:32:44
6 separate external hard drive, and he also brought in three
7 binders' worth of paper which we needed and are now in
8 possession of.

9 THE COURT: Well, again, I got you said that he
10 brought in a hard drive, and then I thought I heard you say he 14:32:58
11 brought in three binders' worth of paper material?

12 DEPUTY MONITOR GIRVIN: He did. He entered the office
13 with the external hard drive and three binders' worth of paper.
14 And the paper we're not questioning; we believe we have
15 received copies of that pursuant to our request. 14:33:15

16 THE COURT: Okay. But you don't have the original
17 hard drive, and you don't know what was on the H drive that may
18 have been downloaded by Detective Mackiewicz?

19 DEPUTY MONITOR GIRVIN: The hard drive which we have
20 in our possession is alleged to contain the contents of the 14:33:33
21 original hard drive that Detective Mackiewicz went into
22 Chief Knight's office with, and whatever material Detective
23 Mackiewicz added to that hard drive that he felt was responsive
24 and pulled off of the H drive.

25 THE COURT: All right. Ms. Iafrate. 14:33:52

1 Let me ask first: Do you know whether or not we've
2 received the copies of these three binders, the material in
3 these three binders?

4 MS. IAFRATE: Yes, Your Honor.

5 THE COURT: Do you know if it has been designated as
6 material from the three binders provided by Detective
7 Mackiewicz?

14:34:04

8 MS. IAFRATE: I don't know how it was labeled, Your
9 Honor, but I assume that it was labeled to be identified that
10 way.

14:34:14

11 THE COURT: Okay. Can you check on that for me?

12 MS. IAFRATE: Yes.

13 THE COURT: Do you have any objection if I order the
14 marshals to take possession of the hard drive that is in
15 Chief Knight's possession?

14:34:22

16 MS. IAFRATE: Yes, Your Honor.

17 THE COURT: And what is that objection?

18 MS. IAFRATE: Your Honor, this hard drive not only
19 contains information regarding the Montgomery case, but it also
20 contains other materials.

14:34:33

21 What Chief Knight and Sergeant Mackiewicz -- or
22 Detective Mackiewicz attempted to do was be responsive to your
23 request during that hearing to provide everything that was
24 responsive as to the Montgomery investigation. And that is why
25 not only did they not stop with the paper or the hard drive;

14:34:52

1 they also searched the H drive to ensure that they had the
2 comprehensive amount of documents responsive to your request.
3 So that's why they went the --

4 THE COURT: And they provided everything but the 50
5 hard drives? 14:35:09

6 MS. IAFRATE: You know, Your Honor, that Chief Knight
7 was not aware of those 50 hard drives.

8 THE COURT: I don't know anything. And I'm not
9 accusing him of anything. I haven't seen the contents of the
10 interview, and that may be well what he said. But I am at this 14:35:20
11 point not prepared to take anybody's word for what was what.
12 Let me propose this and see if it's acceptable to you.

13 I'm going to order the marshals to take possession of
14 that hard drive. I'm going to, as I have in the past, order
15 them to let nobody have access to it till a forensic copy is 14:35:40
16 made. And then I will give you first access so that you can
17 review it and claim as privileged or nonresponsive material
18 that's in the hard drive.

19 Is that acceptable to you?

20 MS. IAFRATE: Yes, Your Honor. Could I provide these 14:35:56
21 myself to the marshals rather than having the marshals go over
22 and seize them?

23 THE COURT: Well, first off, I realize that it was
24 characterized places as a seizure. I just want to say that it
25 was in response to my order. I provided an order last week. I 14:36:12

1 have no basis to believe that -- and the marshals have informed
2 me that there was no resistance from the MCSO.

3 And so I believe that part of the reason I issued the
4 order, Ms. Iafrate, is you had chain of custody concerns and
5 they were very valid, and I think I put that in the order, too. 14:36:30
6 And so just to not -- to avoid any possible chain of custody
7 concerns I'm going to have the marshals receive the hard drive
8 directly from Chief Knight.

9 But I'm not characterizing it as a seizure, I'm
10 characterizing it as a response to my order, which is what I 14:36:46
11 believe last week was, too. Is that satisfactory?

12 MS. IAFRATE: Well, I would still object to the
13 process, Your Honor, but I understand what you're saying.

14 The other problem that I have is this hard drive is in
15 a secure location, and Chief Knight is the custodian of it 14:37:00
16 because he received it from Detective Mackiewicz. Chief Knight
17 is not in today. Could we make some arrangements so that the
18 marshals can come Monday, seeing that it's Friday afternoon?

19 THE COURT: Well, I'm going to order that the marshals
20 contact you today. 14:37:20

21 MS. IAFRATE: That's fine.

22 THE COURT: And that if they receive assurances that
23 nothing's going to hap -- they receive adequate assurances that
24 it's in a secure location, then we can have it on Monday.

25 MS. IAFRATE: Very well. 14:37:32

1 THE COURT: If they don't, I'm going to send them over
2 to get it.

3 MS. IAFRATE: Understood.

4 THE COURT: All right. Anything else, Chief Girvin?

5 DEPUTY MONITOR GIRVIN: Just on that topic, one more
6 request or observation, Your Honor. If you could direct that
7 that hard drive from this point forward not be plugged into any
8 computing device whatsoever. You indicated that you're going
9 to order a forensic copy be made, so we're just concerned that
10 any -- plugging into any computer device at this point would
11 alter the metadata on the hard drive.

14:37:40

14:37:59

12 THE COURT: Any objection to that, Ms. Iaftrate?

13 MS. IAFRATE: No, Your Honor.

14 THE COURT: All right.

15 Are those your issues, Chief Martinez?

14:38:15

16 DEPUTY MONITOR GIRVIN: Yes, Your Honor.

17 THE COURT: All right.

18 DEPUTY MONITOR MARTINEZ: Yes, sir.

19 THE COURT: All right. I'm going to address something
20 that pertains to the material seized last week and some of what
21 Chief Warshaw characterized as the contents of the interviews
22 that caused him concern and caused him to call for the
23 emergency hearing which resulted in my order directing the
24 acquisition of the 50 hard drives, which I take it you're not
25 contesting were materials Montgomery provided to the MCSO, and

14:38:29

14:38:51

1 the identifications.

2 Am I wrong about that statement, Ms. Iafrate?

3 MS. IAFRATE: That we're not contesting that they
4 were --

5 THE COURT: That the 50 hard drives contain material
6 that Montgomery provided to the MCSO.

7 MS. IAFRATE: Your Honor, we still have not evaluated
8 that issue.

9 THE COURT: All right.

10 MS. IAFRATE: So it's a non-answer to you. I do not
11 have an answer for you.

12 THE COURT: That's fine. In any case, I directed
13 their confiscation and they were provided, as I said, without
14 incident. And I have not read -- and as far as I know, they
15 haven't even been transcribed -- some of the interviews that
16 Chief Warshaw described to me last week. And so I obviously
17 don't know what their contents were, and I recognize that
18 everyone has a right to be heard before any decisions are made,
19 and I expect that I will provide that.

20 But I'm going to lay out a little bit what my concerns
21 were about some of those issues so that everybody is aware of
22 what my concerns were, and are, and what I intend to do about
23 those concerns and what I would propose that we do.

24 The very first injunctive order that I entered in this
25 matter back in October 2013 says: Defendant shall ensure that

14:39:03

14:39:14

14:39:30

14:39:52

14:40:25

1 Monitor has timely, full and direct access to all documents
2 that the Monitor reasonably deems necessary to carry out its
3 duties, 145.

4 And then in 146 it specifies that the defendants may
5 withhold from the Monitor any documents or data protected by 14:40:43
6 the attorney-client privilege, acknowledging that that
7 privilege does exist, but, of course, if a -- if the defendants
8 decline to provide that access, they have to give a privilege
9 log, and that's in 146.

10 And in 147 it says -- paragraphs, I'm referring to -- 14:40:57
11 Defendants shall ensure that Plaintiffs' representatives and
12 their consultative experts and agents shall have full and
13 direct access to all of Defendants' documents upon reasonable
14 notice.

15 We, as I've set forth before and don't have to go into 14:41:16
16 in great detail, have encountered several circumstances which
17 have required adjustment of the monitor's authority, including
18 when we discovered -- including when the MCSO elected to handle
19 matters itself that arose from the Armendariz-Perez
20 allegations; and further, when we discovered that the 14:41:37
21 preliminary injunction order had not been complied with at all.
22 And I set forth an order on November 20th, 2014, which said:
23 "An adequate internal affairs division must be willing to
24 engage in thorough examination and, in appropriate cases,
25 agency exposure to discipline and painful public 14:41:55

1 accountability. Of course, to make an appropriate assessment
2 of whether MCSO's PSB is so acting, the Monitor must
3 necessarily have complete access to Defendants' internal
4 affairs investigations. This includes familiarity with the
5 manner in which MCSO pursues an investigation -- be it criminal 14:42:12
6 or administrative in nature -- the investigation's initial and
7 continuing scope in light of the information the investigation
8 uncovers, the performance of the investigators, and the kind of
9 discipline -- if any -- ultimately imposed at its conclusion."

10 There's a number of other provisions in that order 14:42:30
11 which relate to the requirement that the monitor have full and
12 complete access to documents, both in the Internal Affairs
13 Division and of the MCSO, as was the first order. However, on
14 that November 20th order I provided it to all parties and said
15 we're going to operate under this order from henceforth, but 14:42:51
16 I'm going to allow you to raise objections and complaints.

17 And Ms. Iafrate, you did, in the December 4th hearing,
18 and I want to read that -- part of that with you.

19 "Ms. Iafrate: Thank you, Your Honor.

20 "Regarding the November 20th order, on page 16 where 14:43:07
21 you're talking about orders concerning ongoing
22 investigations --"

23 And I say: "Yes."

24 "-- at line 10 it specifically talks about this case
25 and PSB dealing with the constitutional rights of the members 14:43:19

1 of the plaintiff class are guaranteed by MCSO going forward."

2 And I say: "Yes."

3 And you say: "And, of course, MCSO would agree with
4 that, that that was the structure of this litigation."

5 And then we make sure that we're talking about the 14:43:33
6 same order and so you say: "So at page 17 of the November 20th
7 order you talk about the monitor must necessarily have complete
8 access to defendants' Internal Affairs investigations."

9 And I said: "Um-hum."

10 And you said: "Our concern, Your Honor, is that some 14:43:50
11 internal investigations do not deal with the underlying
12 litigation in this matter, so I'd ask that that be curtailed
13 ever so slightly to coincide with what you wrote on page 16,
14 where it deals with investigations of MCSO personnel as it
15 relates to either compliance with the order, meaning your 14:44:06
16 injunctive order, or the constitutional rights of members of
17 the plaintiffs' class."

18 And I tell you: "Show me what line you're talking
19 about."

20 And you say: I'm talking about page 17, line 14." 14:44:18

21 And I tell you: "How about if I do this, Ms. Iafrate?
22 One of the things we've discovered, and I think we've all
23 discovered it, is that there's lots of things that relate to
24 this case and to this -- to this suit in terms of Internal
25 Affairs investigations, PSB investigations. That doesn't mean 14:44:34

1 that everything does; I acknowledge that.

2 "How about if I put in here -- I don't want to limit
3 the monitor's right to have complete access to the PSB because
4 you don't know what you don't know until you know it. But I
5 will put in here the right for you to object, saying that the 14:44:54
6 monitor is investigating matters that can have no relation to
7 this lawsuit and raise the matter to me.

8 "Would that be acceptable to you?"

9 And you say: "That would be acceptable."

10 And that, in fact, is precisely what I did in document 14:45:08
11 825 filed December 9, 2013. I reference our colloquy and I
12 note that upon the recommendation of your parties I'm going to
13 change my order, and I say: "In its Order, the Court indicated
14 that the 'Monitor must necessarily have complete access to
15 Defendants' internal affairs investigations. Defendants are 14:45:30
16 further authorized to file objections with the Court if and
17 when they dispute the Monitor's involvement in particular
18 investigative processes as bearing no relation to the Monitor's
19 evaluation of whether the Professional Standards Bureau is
20 operating in compliance with the Supplemental Permanent 14:45:44
21 Injunction or other Orders of this Court, or as otherwise
22 exceeding the power vested in the Monitor by the Court..." I
23 go on; I'm not going to read it.

24 In February of 2015 I entered an order requiring
25 expedited discovery that says: "Copies of identification 14:46:01

1 documents seized by MCSO personnel from apparent members of the
2 Plaintiff Class" must be provided."

3 Now, we had -- and again, I don't mean to
4 mischaracterize it, and it wasn't under oath, but it was a
5 characterization of the monitor about what some of the 14:46:21
6 witnesses said they were informed in a Friday meeting prior to
7 the monitor's visit that certain identifications located and
8 found that did contain members of the plaintiffs' class were
9 not to be discussed with the monitor, or something to that
10 effect. 14:46:39

11 That violates my orders, and it does so in a direct
12 way. It violates my orders both about what had to be
13 disclosed, and it violates my orders about the access that the
14 monitor has, and should be given, to information in the
15 Internal Affairs Division. 14:46:59

16 And if in fact there is any effort by the MCSO to
17 subvert those orders by lying to the monitor or telling him
18 less than the truth, or informing or instructing their people
19 to do so, that is in fact even a more serious and gross
20 violation of my order. I'm not saying that happened, and 14:47:18
21 again, everybody has an opportunity to be correctly heard.

22 As it pertains to the 50 hard drives that apparently
23 were also -- or at least there was also some information in
24 interviews that there was 50 hard drives that were provided by
25 Montgomery, and not only was there information provided in the 14:47:45

1 interviews, but I noticed when I lifted the documents from
2 under seal that Ms. Wang provided in her response to the motion
3 to compel, I noticed that a number of those documents discussed
4 50 hard drives of downloaded material received from
5 Mr. Montgomery. 14:48:03

6 And we received some information that such materials
7 existed and we found 50 hard drives, and again, Ms. Iafrate,
8 I'm not representing what they are one way or the other. I
9 recognize that they may not be hard drives provided by
10 Mr. Montgomery. Even if they are, I believe, at least based on 14:48:22
11 the testimony I've heard, and it is at least suggested by the
12 e-mails that Ms. Wang provided, that they may be junk, and they
13 may not be what Mr. Montgomery represented to the MCSO they
14 were. I don't know that, either. I recognize there's all
15 kinds of possibilities out there. 14:48:47

16 But I will point out that in the sheriff's testimony
17 on April 23rd I directed him very directly: "... to the extent
18 that you have any control over any funding records, over any
19 reports, over any communications, over any overtime records,
20 travel documentation, any e-mails of any and all people 14:49:02
21 involved in the threat assessment unit or anywhere else, any
22 communications from and to Montgomery, any computers or phones,
23 cell phones or other information that in any way is relevant or
24 related to this investigation, I want you to direct your people
25 to put a hold on it immediately and preserve it. And that 14:49:18

1 includes any documentation or numbers that would relate to
2 Mr. Montgomery's confidential status.

3 "You understand that?"

4 And the sheriff: "Your Honor, are you referring to
5 this investigation with the monitors and --"

14:49:31

6 And I said: "No, no. I'm referring to the
7 investigation that Mr. Montgomery was undertaking with
8 Mr. Mackiewicz, Mr. Anglin, Mr. Zullo, anybody else from your
9 staff, anybody else from the MCSO, or anyone else from the
10 posse. I want all records that in any way relate to it, all
11 electronic data or anything else, or the financing, funding of
12 that operation, all phone records, e-mails, reports, I want it
13 all preserved."

14:49:47

14 "And I think I will send the monitor to begin taking
15 possession of those records and we'll do it confidentially,
16 imminently. But I don't want in the interim any of those
17 records lost, inadvertently or otherwise."

14:50:03

18 The next day, Chief Deputy Sheridan was testifying and
19 ran into a snafu. We'd agreed on a procedure whereby you could
20 have folks over there, and you did. You cooperated.

14:50:23

21 Ms. Iafrate, you had attorneys over there doing rushed review,
22 because that's what I'd ordered that you do. And we ran into a
23 problem where folks were not providing my monitor with the
24 documents, and they wouldn't provide them until you looked at
25 then, approved them, and Bates stamped them, and I told them

14:50:40

1 that under the circumstances, that is not what I ordered, and
2 you will remember that I set out a separate procedure.

3 Chief Sheridan was still on the stand, and so I
4 said -- we went through the objections and I said: "And so I'm
5 going to require that those documents be released immediately. 14:50:58
6 I mean, not without your review. Whoever your designated
7 attorney is, get over there and review them. We'll make some
8 sort of a list of the documents that have been provided, and
9 then we can -- we can match them up when you Bates stamp them.
10 But I want those documents provided." 14:51:14

11 And then I turned to Deputy Chief Sheridan and I said:
12 "Do you have an issue with that, Chief, that we need -- that we
13 need to discuss or concerns that you wanted to raise that I
14 should consider?"

15 And he said: "No, sir." 14:51:26

16 And then I said: "Okay. Is that okay with you?"

17 And he said: "Yes, sir."

18 Then you may remember that after the lunch break I
19 said: "Before we begin, apparently there's been a
20 miscommunication. Chief, I know you were over trying to 14:51:38
21 facilitate or getting those documents over the noon hour, and
22 as soon as you left, folks indicated they wouldn't give the
23 documents until Ms. Iafrate had a chance to review them and
24 they were Bates stamped, which I think we already resolved
25 prior to lunch." 14:51:53

1 "Is there anything you can do to facilitate that
2 production right away, Chief? Who is the captain that said he
3 wouldn't give them?"

4 And then there was an indication that it was
5 Chief Knight. 14:52:02

6 And then I said: "I'm really trying -- the thought
7 occurred to me over lunch, Chief. I'm not trying to use these
8 today. There's going to be too much other stuff. But I really
9 do think it's important to secure the documents. So I'm still
10 going to hold to that order, unless you have some reason, 14:52:14
11 Chief, why I shouldn't. I think it's very important, in light
12 of the history of the case, that we get the documents in a set
13 today."

14 And then, Ms. Iafrate, you said: "From what I
15 understand, Your Honor, at one point there were three requests, 14:52:25
16 and now I think that there are way more requests --"

17 And I said: "Yeah."

18 You said: "-- so it's a moving target."

19 I said: "Yeah, it wouldn't surprise me if the
20 requests are coming in fast and furious, because my folks want 14:52:35
21 to get this arms around everything today. So that may be part
22 of the confusion. But I'm sure I was clear, and I suspect that
23 the chief deputy went over to try to facilitate that, and there
24 must be some confusion, so if you'll call Chief Knight and
25 we'll wait for you." You called Chief Knight and told me that 14:52:50

1 there was -- that the issue was resolved.

2 I issued two more orders in the next week in response
3 to your objections and concerns, document 1032 and document
4 1046, indicating that I expected the immediate production of
5 all such documents. And then -- and I believe all parties have 14:53:07
6 this, but if they don't, I have it here and I'm going to give
7 every party a copy -- Chief Knight provided to you,
8 Ms. Iafrate, and to the Monitoring Team, a response, request by
9 request, of his response to our request for those documents.

10 There's a lot them that relate to the documents, but 14:53:30
11 the one that I'm most concerned about today -- and by the way,
12 it's my understanding from the monitor that you provided these
13 documents to everybody. Not just to the monitor; you put them
14 in the drop box and they went to everybody. If they didn't, I
15 don't see why they shouldn't go to everybody, but that is their 14:53:49
16 understanding.

17 So if that's incorrect and there's some reason I
18 shouldn't read from this, can you tell me that now?

19 MS. IAFRATE: Your Honor, I cannot avow that they went
20 to the plaintiff, but there's no problem with you reading from 14:54:00
21 that document.

22 THE COURT: All right. So one of the many requests
23 that the monitor asked for you to immediately provide is "the
24 work product of Dennis Montgomery, including memoranda,
25 reports, notes, photographs from the Seattle, Washington 14:54:11

1 investigation, and activities referred to in the article by
2 Stephen Lemons in the Phoenix New Times dated June 4th, 2014."

3 And the response from Chief Knight is: "Deputy
4 Mackiewicz delivered all files in the possession of MCSO
5 provided by Dennis Montgomery on an external hard drive. This 14:54:28
6 information was transferred to another external hard drive and
7 provided to monitor Anders and counsel Michele Iafrate on April
8 24th and April 27th, 2015."

9 MS. IAFRATE: Your Honor, could you tell me the
10 number of that -- 14:54:43

11 THE COURT: You know what? It's not Bates numbered.

12 MS. IAFRATE: No, no, no. Didn't he say -- didn't
13 Chief Knight indicate what request he's responding to?

14 THE COURT: ITR 9.

15 MS. IAFRATE: Thank you. 14:54:51

16 THE COURT: Number 9. But in this document,
17 Ms. Iafrate, which, again, I think you provided to everybody,
18 there's a number of requests that relate to that. I'm only
19 reading one, because I don't want to relate them all, because I
20 think that covers it. 14:55:05

21 So after last Friday, when I went home and turned on
22 the news and I saw a report in which Mr. Popolizio was standing
23 next to Chief Sheridan and Chief Sheridan said they didn't
24 provide these documents because they'd never been asked for, I
25 realized that I didn't share that view. That he may be 14:55:20

1 correct, he certainly has an opportunity to be heard, but I
2 thought that it was well that I point out my concerns about
3 what is happening, in light of the attorney-client privilege
4 that's been invoked I have concerns about what is happening and
5 who is giving the direction not to discuss to the monitor. 14:55:43

6 But again, you have a legitimate right to
7 attorney-client privilege at some level which -- which is lost,
8 and I'm not saying that you gave that advice, I don't make that
9 assumption, but I have all of those concerns.

10 Now, let me tell you what I propose to do about it. I 14:56:00
11 do not want to offset the relief that members of the plaintiff
12 class are entitled to, nor do I want to delay any longer
13 corrective action that I think must occur within the Maricopa
14 County Sheriff's Office and revisions to the injunctive relief
15 order, if that ought to happen. 14:56:18

16 Further, I recognize that this is a civil contempt
17 hearing that relates to three matters that I have directly set
18 forth, and these two what I view as direct violations of my
19 order -- and I'm not sure that they are, but they appear to be
20 direct violations of my order -- aren't noticed for this civil 14:56:41
21 contempt hearing.

22 But I think I've made it very plain, which is why we
23 have specially appearing counsel here, that if I determine at
24 the end of the civil contempt hearing that there is a basis and
25 a need to refer any or all of these matters for criminal 14:56:56

1 contempt, I will do so.

2 It also seems to me that these matters, even though
3 they cannot and should not, in and of themselves, be the
4 subject of civil contempt, are relevant to the civil contempt
5 hearing in terms, as I've said all along, about the need and 14:57:11
6 the necessity and the extent of the remedy required that may be
7 sought by the plaintiff class for materials and other matters
8 that were not provided by the Maricopa County Sheriff's Office
9 prior to the trial in this matter, so here is what I would
10 propose. 14:57:32

11 I'm not going to adjust these civil contempt hearings
12 to incorporate those matters which I believe may have been but
13 I do not know were direct violations of my order, but I'm not
14 going to view them necessarily as irrelevant. I don't know
15 whether the attorney-client privilege may have been waived, 14:57:48
16 based on the content of the interviews; I haven't even seen the
17 content of the interviews. But I'm not going to hold a civil
18 contempt hearing concerning them, even though I'm not going to
19 find them irrelevant to the present civil contempt hearing.
20 Nor do I make a representation that they will not possibly be 14:58:06
21 the subject of a future criminal contempt hearing if I
22 determine at the end of these hearings that civil contempt
23 cannot serve the purposes that are required by the nature of
24 the contempt itself.

25 That is how I propose to proceed. Is there any 14:58:26

1 concern or comment by the parties?

2 MS. IAFRATE: I have nothing to add, Your Honor.

3 THE COURT: Okay. Ms. Wang?

4 MS. WANG: Your Honor, we had intended to inform the
5 Court and defendant today that we were going to file a motion 14:58:49
6 for a new order to show cause why defendant Arpaio should not
7 be held in contempt for what appears to be the deliberate
8 withholding of documents in violation of this Court's orders
9 and after consultation with counsel. It was our intent to file
10 that motion early next week, but Your Honor has now stated a 14:59:11
11 proposal to proceed otherwise.

12 I think we do agree with the Court that there are
13 issues relating to these new facts that we have learned from
14 the Monitor Team initially last Friday that would be related
15 to, and overlapping with, the ongoing civil contempt 14:59:37
16 proceeding. But we do believe that there are new grounds for a
17 civil contempt proceeding, and quite potentially for a criminal
18 contempt proceeding, which, of course, would be in the Court's
19 sole discretion to refer for investigation by the United States
20 Attorney's Office or a special prosecutor. 14:59:54

21 But I offer that, Your Honor, because it had been our
22 intent to inform the Court, because it could have a bearing on
23 the scheduling and the scope of the ongoing proceeding.

24 THE COURT: Well, you know, Ms. Wang, I do not want to
25 preclude you from any remedy that you may choose to seek, and 15:00:12

1 I'll consider that. I just put this forth as a proposal so
2 that we could expedite matters that currently exist.

3 I believe that Mr. Birnbaum and others have repeatedly
4 said that there may be people who are not involved here that
5 shouldn't be drug along in the context of a civil contempt 15:00:32
6 hearing, raising to a possible criminal contempt hearing, any
7 longer than necessary.

8 I also, frankly, as I'm sure you do, have concerns
9 about providing prompt and immediate relief and reparation to
10 the plaintiff class, and so my concerns, and I will say it 15:00:48
11 frankly, have been we need to get this first part over. There
12 isn't any part, if I determine that a criminal referral is
13 necessary --

14 (Beeping sound on telephone.)

15 THE COURT: Are you still there? Chief Martinez? 15:01:00

16 DEPUTY MONITOR MARTINEZ: Yes, sir, I'm here.

17 THE COURT: Okay. Did anybody join the call?

18 There isn't any part of anything that I want --
19 because I haven't yet determined that a criminal contempt
20 citation is necessary, I haven't ordered one; I still haven't 15:01:19
21 considered that it's necessary. But I certainly also have not
22 bound myself, if I determine that a criminal referral is
23 necessary, to limiting it only to the three matters of this
24 civil contempt.

25 And it does seem to me that if any criminal contempt 15:01:37

1 proceeding is desirable, I don't want to piecemeal out that
2 criminal contempt hearing; I want to just do one, as I've
3 indicated before. I do believe it's important, for lots of
4 reasons, and justified that I stay on the civil hearing and the
5 enforcement process that pertains to this injunctive order, but 15:01:52
6 I have every intention of referring out not only to the United
7 States Attorney any criminal contempt that may be necessary,
8 but that would go to a different judge. So I don't have any
9 intention of piecemealing one out to one judge, one out to
10 another judge, because, as you know, these matters are randomly 15:02:11
11 drawn.

12 So all the parties can consider what I've just said as
13 you consider how to appropriate -- if you want to do anything
14 with respect to it, I'm not trying to limit any party with
15 respect to any sought relief, but I'm just proposing how we 15:02:24
16 proceed and setting forth my concerns, my inclinations, and
17 that's how we're going to proceed.

18 Again, to the defendants, to the extent you want to
19 introduce evidence in this matter, because I do think, as it
20 seems to me today, it's relevant, although it's not an item or 15:02:41
21 a matter of civil contempt, it is relevant to the civil
22 contempt hearing, so I'm not going to presume to try to prevent
23 you from introducing evidence that you may want to introduce in
24 this action pertaining to it. But as I proposed that we have
25 regular status conferences, these are matters that I hope we 15:02:58

1 can address and adjust in conjunction with the deadlines and
2 the trial dates that we have.

3 And before I'm through today, I do wish to set status
4 conferences on a fairly regular basis. And let me suggest that
5 one of the things -- I'm going to talk to the monitor here

15:03:19

6 again in a second. I think that their investigations may be
7 coming -- I know that they still have to talk to Chief Olson.
8 I'm not sure if Chief Olson's around. I think they have some

9 other interviews that they want you to arrange, Ms. Iafrate,
10 but I think that those requests are going to be made pretty

15:03:40

11 rapidly. If you respond pretty rapidly, those will be over,
12 and it seems to me that one of the things that might be
13 profitable for the parties to do is, as I've said earlier, see

14 if based on those interviews you can arrive at certain
15 stipulations that obviate the need to spend a lot of time on
16 irrelevant things.

15:03:59

17 MS. IAFRATE: Your Honor, we have gone through one
18 round of interviews related to these new investigations. I
19 just got an e-mail right before I walked in here requesting
20 approximately 20 more interviews. So we are scheduling them as

15:04:16

21 quickly as we possibly can. We've done round 1 and round 2.
22 The Chief Olson interview is separate and apart from these
23 interviews that they provide us with an e-mail and say: Please
24 schedule these interviews.

25 THE COURT: All right.

15:04:36

1 MS. IAFRATE: So we're working through both of those.

2 THE COURT: As far as I'm aware, at least as far as
3 the monitor's indicated to me, you've been cooperative, in the
4 large main, in scheduling the interviews, and I anticipate that
5 you'll continue to be so. And if there's a problem, you can
6 always ask for an emergency hearing, as we had last week, if
7 it's necessary, after we set the status orders.

15:04:48

8 All right. I received suggestions from Maricopa
9 County and from the plaintiffs on suggested revisions to the
10 supplemental permanent injunction. I looked at them both. I
11 don't know if either party wants to address them. I must say I
12 think something more simple along the lines suggested by
13 Mr. Masterson is what I'm going to do, but if plaintiffs want
14 to be heard on their a little bit more expansive suggestion.

15:05:18

15 I do want to make it clear, though, to defendants that
16 even if I accept Mr. Masterson's definition and restriction as
17 being in line with the Ninth Circuit authority, the Ninth
18 Circuit authority did not consider in its appeal any of the
19 supplemental adjustments made to the monitor's authority, and
20 those still all go forward.

15:05:35

15:05:56

21 Ms. Iaftrate? Or not Ms. Iaftrate, I'm sorry.

22 Ms. Wang, did you want to be heard?

23 MS. WANG: Sure, Your Honor, briefly.

24 Your Honor, the reason we've presented what I think
25 you just characterized as a more expansive language for the two

15:06:10

1 paragraphs in the supplemental injunction is that I think it's
2 become clear, particularly given the more recent events in this
3 case, that we need to get a handle on MCSO's Internal Affairs
4 investigations and the way that complaints are handled and that
5 discipline is meted out to MCSO personnel.

15:06:33

6 And the concern we have, Your Honor, is that simply
7 limiting the language to fourth and fourteenth --

8 THE COURT: Let me make a suggestion to you, Ms. Wang,
9 and see --

10 MS. WANG: Yes, sir.

15:06:46

11 THE COURT: -- what you think about this.

12 MS. WANG: Okay.

13 THE COURT: I feel myself bound by the Ninth Circuit
14 Court of Appeals, for some strange reason, and the Ninth
15 Circuit indicated that I needed to limit the scope of my
16 injunction to matters involving the plaintiff class.

15:06:54

17 It seems to me that Mr. Masterson's and
18 Mr. Popolizio's suggestion does that pretty clearly, but as
19 I've indicated, that does not change the adjustments made to
20 the monitor's authority in light of intervening events.

15:07:09

21 If you believe that intervening events require this
22 Court to again adjust the monitor's authority upward, let me
23 suggest that I would be more inclined to adjusting the
24 monitor's authority upward in light of intervening events
25 rather than curtailing my original injunctive order, which I

15:07:33

1 believe the Ninth Circuit has already indicated I need to
2 narrow slightly.

3 MS. WANG: Understood, Your Honor. And but separate
4 and apart from the intervening events, we believe just on the
5 record through the trial, and in light of the Ninth Circuit's 15:07:46
6 order, the language that Mr. Masterson has proposed doesn't
7 capture the full range of activity. That is limited to the
8 plaintiff class. We think that our proposal captures -- is
9 limited to the plaintiff class as the Ninth Circuit directs,
10 but would also encompass violations of agency policy that could 15:08:05
11 implicate the rights of the plaintiff class that do go to the
12 issues of discriminatory policing, and, Your Honor, I think
13 this point has been discussed before in court, don't leave it
14 in the hands of MCSO to classify a particular matter as falling
15 within the ambit of a Fourth or Fourteenth Amendment violation. 15:08:32
16 Our language is only slightly more expansive, and I would
17 submit discusses policy violations, which are often the focus
18 of the charged violations in Internal Affairs investigations.

19 So, in other words, from what we have seen and from
20 standard law enforcement practices, I think that Internal 15:08:51
21 Affairs investigations often are focused on violations of
22 agency policy, in this case of MCSO's policy and procedures
23 manual, and not necessarily explicitly involving violations of
24 the Constitution.

25 I therefore think that the language that we've 15:09:09

1 proposed, setting aside intervening events and based solely on
2 the trial record and not in light of the Ninth Circuit's
3 opinion, would capture a much more limited category of material
4 than what Your Honor first ordered in October of 2013, but
5 would be limited to the plaintiff class as the Ninth Circuit
6 has ordered. 15:09:27

7 THE COURT: I'll consider that, Ms. Wang, but doesn't
8 some of that go to a possible remedy, if in fact I find that
9 the material that you were deprived and should have received
10 indicates that their Internal Affairs problem has processed -- 15:09:46
11 or their Internal Affairs process has problems, and that their
12 complaints from the public have problems and everything else,
13 and that that material would have -- or the material that was
14 withheld would have provided you with that information so that
15 you could have presented it at trial, don't I have to make that 15:10:04
16 finding first?

17 MS. WANG: Your Honor, I think that as you noted, we
18 could be seeking additional and different relief after the
19 outcome of the ongoing proceeding. I'm just speaking based on
20 the trial record. I think what we have is a Ninth Circuit 15:10:21
21 order, an opinion that said that the original paragraphs 136I
22 and J were not limited to the plaintiff class. We think that
23 our proposed language is limited to the plaintiff class, but is
24 going to capture the disciplinary outcomes and misconduct
25 complaints in the way that they are categorized and classified 15:10:43

1 in a normal MCSO Internal Affairs proceeding.

2 Just to be clear, because I'm not sure I was, I think
3 that the way that Internal Affairs, or now PSB, files are kept,
4 what's normally charged, in terms of misconduct alleged against
5 a deputy, is a violation of agency policy. We haven't seen 15:11:04
6 that many files that explicitly allege that a deputy has
7 violated the Fourth and the Fourteenth Amendments of the
8 Constitution. That's my main point in why I think our language
9 is both necessary, and is limited in the way the Ninth Circuit
10 ordered. 15:11:25

11 THE COURT: All right. I follow you. Thank you.

12 MS. WANG: Thank you.

13 THE COURT: Mr. Popolizio, do you want to be heard on
14 this?

15 Or is it you, Ms. Iafrate? 15:11:30

16 MS. IAFRATE: It's me, Your Honor.

17 THE COURT: Okay.

18 MS. IAFRATE: I don't have anything to add to our
19 proposed language, Your Honor. The way that we proposed it was
20 we went back to the Ninth Circuit's language and incorporated 15:11:37
21 that into our proposal. Therefore, it tracks the Ninth
22 Circuit's mandate.

23 THE COURT: You wouldn't contest Ms. Wang's point,
24 though, that if agency policy has been violated with respect to
25 the members of the plaintiff class, that wouldn't violate the 15:11:52

1 Ninth Circuit's order.

2 MS. IAFRATE: It wouldn't violate the Ninth Circuit
3 order --

4 THE COURT: I mean, the Ninth Circuit's mandate to me
5 back saying you need to limit it to activities involving
6 members of the plaintiff class, so it doesn't have to be just
7 constitutional violations.

15:12:00

8 MS. IAFRATE: Correct, Your Honor, it doesn't have to
9 be just constitutional violations, but the way that plaintiffs
10 have worded their proposal, it expands it much further than
11 what you just posed to me.

15:12:14

12 THE COURT: I agree, but I do agree, I think, with
13 Ms. Wang's supplemental point, which is that it does requi- --
14 I should make sure that the issues are related to members of
15 the plaintiff class. But the members of the plaintiff class
16 are entitled to the benefits of MCSO policy just like every
17 other citizen is entitled to the benefits of MCSO policy, are
18 they not?

15:12:29

19 MS. IAFRATE: Yes.

20 THE COURT: Okay. So you wouldn't have any dispute
21 with Ms. Wang's final point there.

15:12:42

22 MS. IAFRATE: The point that she makes, I would agree
23 the language that she posed does not say the final point that
24 she said.

25 THE COURT: Okay.

15:12:51

1 MS. IAFRATE: I think that it's more expansive.

2 THE COURT: No, I agree that the language she proposed
3 was more expansive than that, and I'll take a look at it and
4 enter an order this week.

5 MS. IAFRATE: Very well. 15:12:59

6 THE COURT: All right. We have responses to
7 Mr. Klayman's motion for admission pro hac vice.

8 Is he here, and does he wish to be heard?

9 All right. He's not here. Now, I'm not -- let me
10 just say that I told him that I would give him a full 15:13:13
11 opportunity to reply if he wished to. And he hasn't replied,
12 and the time hasn't run for his reply so I'm not going to rule
13 on that today. I'll allow him to appear -- file a reply if he
14 wishes to and appear at the next status conference and argue
15 that he should be admitted to pro hac vice status. 15:13:31

16 I am going to note the plaintiffs have opposed his
17 admission for reasons that I raised with him last week, which
18 is he has signed -- he signed all of Mr. Moseley's appli- --
19 well, he didn't sign them, but he was on the block, on the
20 signature block, and on the -- he's in the same law firm. I 15:13:54
21 don't see that there's any different analysis, and it seems to
22 me that the conflict is still the same. I'm concerned about
23 him being a witness.

24 And as I've said before, I'm also concerned that his
25 motion to intervene as it pertains to the ability to claim 15:14:07

1 rights in Mr. Montgomery's property is not well taken because
2 we're not adjudicating Mr. Montgomery's rights to his own
3 property in this proceeding. But those are the matters, if
4 Mr. Klayman gets a copy of the transcript, that I am concerned
5 about, and we will let him address it at that time. 15:14:23

6 I do have one concern that I want to share with
7 Maricopa County, and by that I mean Mr. Walker.

8 Mr. Walker, last week I think you indicated that you
9 really don't have any right to substantively argue anything
10 different than the sheriff, because while you have no power to 15:14:38
11 control the sheriff, and you may or may not agree with him,
12 Maricopa County is bound legally and liability-wise by his
13 actions. And you filed a different -- you filed a substantive
14 opposition to the admission for pro hac vice of Larry Klayman
15 when the sheriff explicitly took no possession one way or the 15:15:04
16 other.

17 I don't know that you have any authority to do that,
18 do you?

19 MR. WALKER: Yes, Your Honor, I think that I do, and
20 it sounds as though I may have left the Court with a 15:15:14
21 misimpression the last time we spoke about this issue.

22 Let me try to be clear. What you and I were
23 discussing at the last status conference had to do with
24 financial responsibility for the costs related to remedial
25 orders coming out of this proceeding. And the point I was 15:15:40

1 trying to make is there's an Arizona statute that requires the
2 board of supervisors to provide funding for reasonable and
3 necessary activities, law enforcement activities, of the
4 sheriff. And that, we interpret as requiring, at least to the
5 extent that we're not talking about willful violations, that
6 the County has a financial obligation under that statute and
7 has been acting --

15:16:08

8 THE COURT: Well, I understand that. Let me get right
9 to the point.

10 MR. WALKER: Okay.

15:16:22

11 THE COURT: What point -- what argument, as I think I
12 read the Ninth Circuit opinion, and I'll go back and reread it
13 before we meet next week, I'm not going to prohibit you from
14 being a party here because you're providing and you're
15 responding to document production requests. You clearly are a
16 party. But as I read the Ninth Circuit order, you're a party
17 because you're going to be liable for any judgment, not because
18 you have any substantively different legal right to protect.

15:16:35

19 Can you identify for me what substantively different
20 legal right the County has to protect in defending itself
21 against liability that is incurred by the sheriff but not by
22 you?

15:16:52

23 MR. WALKER: Certainly, Your Honor. The Board of
24 Supervisors, and the portion of the county government that
25 operates under their direct supervision and direction, has a

15:17:09

1 direct fiscal responsibility to the taxpayers of this county to
2 ensure that the tax revenues are used in appropriate ways. The
3 sheriff has no independent responsibility with respect to that,
4 so in that sense, the interests are very different.

5 As Your Honor I would imagine is well aware, it is not 15:17:38
6 uncommon for the Board of Supervisors and the sheriff to be on
7 opposite sides of litigation, and --

8 THE COURT: But the liability here is not based on
9 anything that the Maricopa County Board of Supervisors has done
10 at all, so I don't know that you have -- I mean, I think you're 15:17:58
11 a party here because you're going to be liable for the
12 judgment, but I don't know that you have any ability to make
13 any liability argument separate from the sheriff.

14 Why don't you consider that, because I don't want to
15 deprive you of that right if you've got it; I just don't know 15:18:15
16 that you have it.

17 MR. WALKER: Could I just speak very briefly to the
18 Klayman motion?

19 THE COURT: To what?

20 MR. WALKER: The Klayman -- 15:18:25

21 THE COURT: No. And the reason I'm not going to let
22 you speak to the Klayman motion isn't because I'm not sure that
23 I won't let you be heard on it; it's that Mr. Klayman is not
24 here. We're not going to take up that motion because I told
25 him I would give him a chance to reply, and the time for reply 15:18:37

1 has not yet run so that may be why he's not here.

2 But if I decide that you have a right to be heard on
3 it, I'll let you be heard when we take up the Klayman motion.

4 Okay?

5 MR. WALKER: Okay. Thank you, Your Honor.

15:18:51

6 THE COURT: Thank you, Mr. Walker.

7 The Department of Justice has filed a motion to
8 intervene. The plaintiffs have filed a non-opposition to such
9 a motion. Are the defendants going to oppose the motion?

10 The time hasn't run, so if you're going to oppose the
11 motion, I think you have, like, two or three days left to file
12 an opposition if you're going to. I just want to know if
13 you're going to. If you're not going to, I'm going to grant
14 the motion.

15:19:03

15 MS. IAFRATE: Your Honor, we would like the full time.
16 I think that it's August 6th.

15:19:14

17 THE COURT: Oh, is it? Okay.

18 MS. IAFRATE: That was my calendaring.

19 THE COURT: I didn't count it. I'll accept your
20 representation.

15:19:24

21 MR. WALKER: As would the County, Your Honor.

22 THE COURT: Okay. Why don't we set status
23 conferences, and these may need to be adjusted, but right now
24 why don't we set status conferences for August 14th at
25 9:00 a.m., August 21st at 10:00 a.m., August 28th at 9:30,

15:19:35

1 September 4th at 9:00 a.m.

2 I, unfortunately, already have a matter all Friday the
3 11th, so I would like to set it for September 10th at
4 9:00 a.m., and September 18th, which will just be four days
5 before the hearing resumes, at 10:30. 15:20:00

6 MS. IAFRATE: I do have a conflict with one of those
7 dates, Your Honor. I will be in trial August 21st.

8 THE COURT: Do you have anybody you could send,
9 Ms. Iafrate?

10 MS. IAFRATE: Well, Your Honor, I will see if I can 15:20:13
11 work --

12 THE COURT: How about we do this? Set those dates,
13 everybody put down those dates, and just tell me if you've got
14 a problem, and we'll see if we can make adjustments at the next
15 status conference. 15:20:32

16 MS. IAFRATE: Very well.

17 THE COURT: Does that work?

18 MS. WANG: It does, Your Honor. On the plaintiffs'
19 side, we already know that none of plaintiffs' counsel are
20 available on August 14th. We could be available the Monday of 15:20:38
21 that week.

22 THE COURT: "The Monday" meaning what? You mean the
23 following Monday?

24 MS. WANG: No, the previous Monday, or the following
25 Monday; either one, I think. 15:20:53

1 Oh, wait. Sorry. The previous Monday.

2 THE COURT: So that would be -- I'm terrible.

3 MS. WANG: I'm sorry. Let me --

4 THE COURT: Would that be the 10th?

5 MS. WANG: -- get the calendar in front of me. 15:21:03

6 THE COURT: That would be August 10th?

7 MS. WANG: The 10th. August 10th.

8 THE COURT: All right. I will maybe -- we won't
9 schedule one on the 14th. I will look at setting one on the
10 10th, but I will tell you that normally my Mondays are 15:21:09
11 completely filled with criminal matters, so it's going to be
12 either very early in the morning, very late. And hopefully, it
13 won't be of this extent, because I simply won't have this time.
14 But I think we've resolved a lot of things here today, I hope
15 so. 15:21:26

16 Mr. Birnbaum.

17 MR. BIRNBAUM: Yes. Thank you, Your Honor.

18 Your Honor, I --

19 THE COURT: I need to have you speak in a microphone.

20 MR. BIRNBAUM: Let me pull on one. 15:21:35

21 THE COURT: You can approach the podium.

22 MR. BIRNBAUM: Oh. Thank you.

23 Your Honor, just on --

24 THE COURT: I need to have you speak at a microphone,

25 Mr. Birnbaum. 15:21:40

1 MR. BIRNBAUM: Your Honor, just on the scheduling
2 issue, I'm sorry to take your time, I just want to advise the
3 Court that I teach at the ASU Law School --

4 THE COURT: Um-hum.

5 MR. BIRNBAUM: -- Friday morning from 8:30 to 11:30. 15:21:52
6 Is not a problem. I will have somebody from my office attend
7 the status conferences. But it is likely that unless something
8 specifically is agendized that involves Mr. MacIntyre, it is
9 likely I will not attend any of those conferences personally,
10 with the Court's permission. 15:22:15

11 THE COURT: You have it. Thank you, Mr. Birnbaum.

12 MR. BIRNBAUM: Thank you.

13 THE COURT: Ms. Clark.

14 MS. CLARK: Judge, just briefly, I had reached out to
15 Ms. Wang to ask her if she's aware whether there's going to be 15:22:28
16 an issue for a status conference that is going to involve
17 Mr. Casey, that she let me know ahead of time so I can here.

18 As you know, Mr. Casey's --

19 THE COURT: That seems to me to be perfectly
20 reasonable. Is everybody okay with that? 15:22:47

21 MS. CLARK: So I will not --

22 THE COURT: Everybody has nodded their assent, let me
23 state for the record.

24 Let me just say I don't think the monitor has any
25 intent to -- I may be wrong about this, I may be completely 15:22:55

1 wrong, so maybe I ought to shut up, but I do think that I
2 haven't precluded the parties, if they want to do depositions,
3 from doing depositions. I've only said you need to talk -- get
4 the clearance of the monitor first.

5 I think the monitor's pretty much given to Ms. Iafrate 15:23:09
6 the interviews that he wants to do, so if you want to depose
7 people that aren't on that list, check with him and you can
8 begin depositions, and I know there may be an issue with that
9 with respect to Mr. Casey. Otherwise, I think we ought to not
10 require Ms. Clark to be here every time, and we should do her 15:23:24
11 the courtesy of letting her know in advance if there's going to
12 be an issue that involves Mr. Casey.

13 Any problem with that?

14 MS. WANG: No, Your Honor, not from plaintiffs.

15 MS. IAFRATE: No, Your Honor. 15:23:35

16 MR. WALKER: That's fine, Your Honor.

17 MR. COMO: I have no objection, Your Honor.

18 MS. CLARK: Thank you, Judge. Mr. Casey just asked me
19 to raise two issues regarding his deposition, his potential
20 deposition, and that is just since it's been a while with the 15:23:48
21 motion to stay, that he's hoping that Your Honor is going to be
22 present for his deposition. He doesn't want to have to come
23 back for repeated depositions.

24 It's such a unique case and such a unique deposition
25 of the defendant's former counsel, there will be constant 15:24:08

1 issues of confidentiality, privilege, and perhaps other issues,
2 that would -- he's going to need a ruling on in order to be
3 able to answer questions. And to get this done timely and
4 efficiently for Mr. Casey, as well as the parties and the
5 Court, he's again reiterating that he very much would like you 15:24:24
6 to be present for his deposition.

7 Secondly, he is just concerned that production issues,
8 privilege issues concerning production, obviously all be
9 resolved prior at his deposition.

10 THE COURT: All right. Well, I think we've tried to 15:24:40
11 undertake steps towards that today. Counsel probably will be
12 in touch with you -- counsel will probably be in touch with you
13 trying to coordinate that deposition, and it isn't an ex parte
14 contact for counsel and you to contact my judicial assistant to
15 try and find a date that's going to be convenient for me to be 15:25:05
16 there. I think we've already discussed that if I could be,
17 that would be optimal. But I also have a schedule, Ms. Clark,
18 with all due respect, so we'll have to do what we can do.

19 MS. CLARK: Yes, Judge.

20 THE COURT: But I will try to be there. 15:25:18

21 MS. CLARK: Yes, Judge. Thank you.

22 And finally, the last point is we will be producing
23 the documents as discussed earlier on August 3rd. I will be
24 out of the country and unavailable August 4th through the 14th.
25 So if there are other production issues that come up during 15:25:28

1 that time, I'll have to be handling them when I get back on the
2 17th.

3 THE COURT: Happy vacation.

4 MS. CLARK: Thank you.

5 THE COURT: If there's nothing else, then I am, as I
6 indicated I would, going to take the matter that Ms. Iafrate
7 asked be addressed under seal under seal.

15:25:39

8 Are there other matters to be raised?

9 MS. WANG: One other issue we wanted to flag for Your
10 Honor because it could bear on the scheduling of the actual
11 hearing. We've been in the process of meeting and conferring
12 with the defendants about a process for making whole the
13 victims of the preliminary injunction violations. We don't
14 know yet whether we're going to come to any agreement.

15:25:53

15 It may be necessary for us to put on some testimony on
16 that subject, and Ms. Pedley, my co-counsel from Covington, has
17 been taking the lead for us in that meet and confer process and
18 can alert the Court, if you wish, as to the status of those
19 conversations and what the issues may be.

15:26:08

20 THE COURT: All right. Ms. Hedley, please approach --
21 either grab a microphone or approach the podium, please.

15:26:27

22 MS. PEDLEY: Thank you, Your Honor. As my co-counsel
23 mentioned, we have been meeting and conferring. We would
24 recommend that we use a claims administration firm. We hope to
25 reach consent on that issue, the advantage of that being they

15:26:43

1 can handle many of the issues, including notice and evaluating
2 claims and processing those claims.

3 If we are unable --

4 MR. WALKER: I have to object. We talked about this
5 before this status conference began, and my understanding was 15:27:01
6 that the Court was going to be informed that we have been
7 engaged in meet and confer, and continue to be, without getting
8 into the substance of those discussions.

9 THE COURT: That's fine. Let's not get into the
10 substance, then, Ms. Hedley. 15:27:19

11 MS. PEDLEY: Absolutely, Your Honor. We just wanted
12 to alert the Court that if we are unable to reach an agreement
13 as to the process, we will have to put on testimony as to what
14 that process we would advocate look like.

15 THE COURT: All right. I'm aware of that. That seems 15:27:32
16 to me to be an issue. I think from now on we're going to try
17 to refine issues. If we can stipulate and solve them, we're
18 going to eliminate them. And we will refine this until we have
19 a very, hopefully, efficient and succinct hearing available for
20 everyone. 15:27:46

21 MS. PEDLEY: Thank you, Your Honor.

22 THE COURT: Anything else? Mr. Eisenberg.

23 MR. EISENBERG: Your Honor, to the extent that this
24 next portion is a sealed hearing, I feel very secure it
25 probably doesn't pertain to my client and I would ask that I be 15:28:00

1 permitted to be excused.

2 THE COURT: You may be excused if you wish to be.

3 Anybody else who wishes to be excused may be excused
4 except for plaintiffs and defendants.

5 And, of course, you, Mr. Como, can't be excused. I'm 15:28:11
6 sorry. You're separately representing.

7 Well, I suppose if you asked to be excused, you can be
8 excused.

9 MR. YOUNG: Your Honor, with respect to what
10 Mr. Walker just said, and I was the one that had the 15:28:25
11 conversation prior to the hearing and I apologize if there was
12 a misunderstanding, I think my thought was that we weren't
13 going to discuss the substance of the conversations that we had
14 been having, but we were, certainly, wanting to inform the
15 Court of what we were thinking, at least on our side, the Court 15:28:40
16 should order.

17 So if that was a failure on my part to communicate as
18 to what we intended to say, my apologies to Mr. Walker and
19 Ms. Iafrate.

20 THE COURT: I think Mr. Walker acted promptly in order 15:28:52
21 to defend his client's rights, and if he wants to do anything
22 further about it, he can, and we'll take it up from there, but
23 I understand your correction.

24 All right. The hearing is now under seal. I'm going
25 to ask everybody who is not a party to this lawsuit or not a 15:29:09

1 specially appearing party to be excused.

2 (The courtroom is cleared.)

3 (Sealed proceedings omitted.)

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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 3rd day of August, 2015.

s/Gary Moll

EXHIBIT C

COVINGTON



Keith A. Teel

Partner

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Practices

- Intellectual Property
 - Patent Litigation
- Litigation
 - Insurance Coverage Litigation & Arbitration
 - Product Liability & Mass Tort Defense
- Public Policy & Government Affairs
 - Congressional & Federal Agency Advocacy
- Food & Drug

Industries

- Life Sciences

Education

- University of Virginia School of Law, J.D., 1981
 - *Virginia Law Review*
- Washington and Lee University, B.S. (Chemistry), 1978
 - *magna cum laude*

Bar Admissions

- District of Columbia
- U.S. Patent and Trademark Office

Keith Teel litigates patent and product liability cases. He emphasizes trial work, but has also argued in various appellate courts, including the U.S. Supreme Court. He has extensive experience developing and overseeing the enactment of state legislation focusing on liability issues, and is highly experienced in handling issues involving sensitive political or public policy considerations. Mr. Teel co-chairs the firm's patent litigation practice group.

Representative Matters

- Counsel for name-brand pharmaceutical manufacturers in Hatch-Waxman litigation and trials, and for other product manufacturers in patent litigation involving various kinds of technology.
- Representation of major pharmaceutical manufacturers in product liability litigation and related insurance coverage disputes.
- Represented all of the major U.S. tobacco manufacturers in their disputes with state attorneys general that culminated in the November 1998 Master Settlement Agreement, taking the lead in discussions with elected officials throughout the United States.
- Developed and oversaw the enactment in over forty states of state legislation relating to liability standards and litigation procedure, involving issues such as product liability reform, consumer protection reform, appeal bond limits, and punitive damages legislation, and class action procedures.
- National coordinating counsel for product liability litigation involving the Tobacco Institute.

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- Coverage counsel for policyholders in disputes with insurers over product liability claims, environmental disputes, and other liabilities.
- Briefed and argued in the United States Supreme Court on behalf of petitioners in *Traynor v. Turnage*, 485 U.S. 535 (1988), which determined that administrative decisions of the Veterans Administration could be appealed in the federal courts and led to the creation of the Court of Veterans Appeals, and which also considered the applicability of the Rehabilitation Act of 1973 to the Veterans Administration.
- Representation of death row inmates, including serving as lead counsel in a case that resulted in the release in February 2012 of an Alabama prisoner who had spent the preceding seventeen years on death row.

Honors and Rankings

- *Washington D.C. SuperLawyers*, Product Liability Defense
- *Best Lawyers in America*, Product Liability Defense
- *Euromoney's Guide to the World's Leading Insurance and Reinsurance Lawyers*
- Various Who's Who
- American Tort Reform Association, Legal Reform Champion